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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481pm

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6 In the Matter of:

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8 DELPHI CORPORATION, et al.

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10 Debtors.

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12 - - - - -x

13

14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17

18 May 9, 2006

19 3:07 P.M.

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21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

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2 Hearing re Motion to Authorize Motion for
3 Order Under 11 U.S.C. Section 1113(c)
4 Authorizing Rejection of Collective Bargaining
5 Agreements and Under 11 U.S.C. Section 1114(g)
6 Authorizing Modification of Retiree Welfare
7 Benefits

8

9 Hearing re Statement/Expert Report of Thomas
10 A. Kochan in Opposition to Debtors' Motion for
11 Order Under 11 U.S.C. Section 1113(c)
12 Authorizing Rejection of Collective Bargaining
13 Agreements and Under 11 U.S.C. Section 1114(g)
14 Authorizing Modification of Retiree Welfare
15 Benefits

16

17 Hearing re Motion to Authorize Motion for
18 Order Under 11 U.S.C. Section 1113(c)
19 Authorizing Rejection of Collective Bargaining
20 Agreements and Under 11 U.S.C. Section 1114(g)
21 Authorizing Modification of Retiree Welfare
22 Benefits

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1 Hearing re Motion to Dismiss Party/Limit
2 Participation in the Hearing on Delphi's
3 Section 1113 and Section 1114 Motion
4
5 Reply to Motion Omnibus Reply of UAW in
6 Support of Motion to Limit Participation in
7 the Hearing on Delphi's Section 1113 and
8 Section 1114 Motion
9
10 Notice of Hearing/Proposed 1113/1114 Hearing
11 Agenda
12
13 Hearing re Motion to Authorize Motion for
14 Order Under 11 U.S.C. Section 1113(c)
15 Authorizing Rejection of Collective Bargaining
16 Agreements and Under 11 U.S.C. Section 1114(g)
17 Authorizing Modification of Retiree Welfare
18 Benefits
19
20 Declaration of Kevin M. Butler in Support of
21 Delphi's Motion for Authority to Reject
22 Collective Bargaining Agreements Under 11
23 U.S.C. Section 1113(c) and Modify Retiree
24 Welfare Benefits Under 11 U.S.C. Section
25 1114(g)

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2 Declaration of Randal A. Middleton

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4 Objection to Motion

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6 Declaration of Donald L. Griffin

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25 Transcribed by: Lisa Bar-Leib

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay.

3 We're back on the record on Delphi. We have

4 some -- a creditor or some shareholders to

5 hear from?

6 MR. LAURIA: Good afternoon, Your
7 Honor. Tom Lauria with White & Case. As I
8 previously indicated, we represent an ad hoc
9 committee of equity security holders that, in
10 the aggregate, hold just under 20 percent of
11 the company's issued in outstanding common
12 stock. They are Appaloosa Management, Wexford
13 Capital, Partas Capital Management and Lampy
14 Conway.

15 Thoughtful review of the relief
16 requested and the relevant facts and
17 circumstances in these cases, reveals that the
18 debtor's 1113/1114 motions fail on multiple
19 levels. If granted, the motion would defeat
20 bedrock bankruptcy policy. In particular, the
21 right of stakeholders to be heard and to vote
22 before; not after the debtors lock in a
23 particular reorganization strategy.

24 The relief sought, like check
25 rejection power, is not available under the

14

1 statute, as I believe the Court agrees. And
2 importantly belies the fact that no relief is
3 needed or proper at this time.

4 Finally, the stringent tests of
5 section 1113 and 14, imposed to protect the

6 multiple interests that may be impacted by the
7 revision of a debtor's labor obligations, have
8 not been satisfied.

9 Fundamentally, the debtors seek to
10 implement the main act of this Chapter 11 case
11 without the protections afforded stakeholders
12 with respect to such matters. Inexplicably,
13 this, the debtor's attempt to do without any
14 showing as to why the relief is needed now,
15 without any showing as to why less intrusive
16 interim relief would be inadequate, and
17 without any analysis of or sensitivity to the
18 potentially devastating impact on the debtor's
19 stakeholders of the multi-billion dollar
20 claims in favor of GM to which this relief
21 unnecessarily exposes the Delphi estate.

22 In short, there is no legitimate
23 business justification proffered for this
24 relief at this time. As such, the motion
25 should be denied at this time without

15

1 prejudice to the debtor's right to seek
2 statutorily provided interim relief or to re-
3 file once a plan has been negotiated and is on
4 the table.

5 One of the fundamental principals

6 upon which Chapter 11 is built is stakeholder
7 democracy. When the debtor wants to
8 reorganize, its plan is subjected to a vote of
9 the impaired stakeholders. This is a key
10 component of the balance struck by the code
11 between fostering the rehabilitation of a
12 distressed business on the one hand and
13 protecting stakeholder rights on the other.

14 As we all know, the debtor's
15 direction under the code is to maximize value
16 for the benefit of its stakeholders. While it
17 is given substantial liberty to work toward
18 that goal during dependency of a case, when it
19 comes to the matter of the debtor's
20 reorganization, which is to be expressed in a
21 plan, the parties for whose benefit the debtor
22 labors are afforded the right to vote.

23 The unstated expectation, of course,
24 is that as a consequence of going through the
25 hoops of the planned process, the

16

1 reorganization well had been largely
2 negotiated and that the majority of
3 stakeholders, both by class and in toto, will
4 accept the plan.

5 Recognizing that such hoped-for
6 stakeholder unanimity cannot always be

7 achieved. The code permits non-consensual
8 confirmation on both a creditor-by-creditor
9 basis and a class basis. But if the --

10 THE COURT: How do you reconcile
11 this with the timing requirements of 1113(d)
12 and the Second Circuit's opinion in Carey?

13 MR. LAURIA: Your Honor, I think
14 that these case -- first of all, I think that
15 the fact that relief can be obtained under
16 1113 doesn't undo the fact that you still have
17 to look at the facts and circumstances of each
18 case and the Court has to determine the impact
19 of the relief requested on the overall
20 reorganization. And I think it would be
21 turning the process upside down to allow one
22 statutory provision to undo the whole scheme
23 of Chapter 11 which is directed to a plan of
24 reorganization and the process that that
25 contemplates.

17

1 THE COURT: All right. I think you
2 better move on off of this point.

3 MR. LAURIA: Pardon me?

4 THE COURT: I think you better move
5 on off of this point. But let me ask you
6 also, you said that the debtor can seek

7 interim relief?

8 MR. LAURIA: Pardon me?

9 THE COURT: You said the debtor
10 could seek interim relief?

11 MR. LAURIA: Yes, Your Honor.

12 THE COURT: Under 1113(e)?

13 MR. LAURIA: Correct.

14 THE COURT: And you would view that
15 that interim relief would go to changes
16 essential to the continuation of the business?

17 MR. LAURIA: Correct.

18 THE COURT: Okay.

19 MR. LAURIA: In fact, Your Honor, I
20 think it's telling that Mr. Butler, in his
21 opening, no less than three times made the
22 point of saying that the debtors are not
23 seeking relief under 1113(e), the only
24 statute, in Mr. Butler's words, that requires
25 any showing of necessity. I think what this

18

1 tells us is that the debtors want the relief
2 but don't want to have to show that they need
3 it.

4 THE COURT: No. They're not seeking
5 relief under 1113(e).

6 MR. LAURIA: Correct. They want to
7 -- they want permanent relief. But they don't

8 want to have to meet the shelling of the
9 statute in 1113(e) that says they have -- it
10 has to be necessary to the business.

11 THE COURT: Well, 1113 doesn't say
12 that. It says, essential to the continuation
13 of the business or in order to avoid
14 irreparable damage to the estate.

15 MR. LAURIA: Yes. Agreed.

16 THE COURT: Okay.

17 MR. LAURIA: And the point is that
18 the debtors don't want to shift -- although
19 the debtor's evidence is going to be that
20 because the cash burn is so great between now
21 and October 2007, when the contracts expire,
22 they need the relief now. That sounds like
23 evidence to support interim relief, not
24 permanent relief. And when we get to that
25 part in the statute --

19

1 THE COURT: No, I understand your
2 point now.

3 MR. LAURIA: Okay.

4 THE COURT: Okay.

5 MR. LAURIA: Thank you. Your Honor,
6 the simple point I'm trying to make is that in
7 the plan process, even when you get that

8 nonconsensual confirmation, the stakeholders
9 are given protections, whether individually or
10 by class. This process strips them away. The
11 debtors have, publicly, in their papers filed
12 before this Court and in statements made on
13 the record here and in every conversation we
14 have had with debtor's counsel, that this is a
15 labor transformation case.

16 By this, we are told that they mean
17 that the sine qua non of their reorganization
18 will be their ability to materially adjust
19 their labor costs, which by the debtor's
20 admission are currently three to four times
21 market. And yet, they now purport to take
22 that critical step, which is the admitted
23 centerpiece of their reorganization, without
24 first putting the rest of the reorganization
25 on the table.

20

1 Without putting forth the
2 information that the constituencies would
3 ordinarily expect to have and indeed, by code
4 be required to have, to assess the
5 consequences of the proposed labor
6 transformation, the value created thereby, the
7 resulting treatment to stakeholder claims and
8 interests, the alternatives --

9 THE COURT: What -- I'm sorry --
10 what provision of the code are you referring
11 to?

12 MR. LAURIA: 1125, Your Honor.

13 THE COURT: How is this a plan under
14 Chapter 11?

15 MR. LAURIA: Well, Your Honor, I
16 think you can look at the debtor's motion for
17 that indication. I think the debtors know
18 that, in effect, they are establishing a plan
19 --

20 THE COURT: You know, Mr. Lauria, I
21 understand you made this argument in your
22 papers but it just doesn't hold water. This
23 is not a Chapter 11 plan. Even under
24 Brandoff, it's not a Chapter 11 plan. You
25 could preserve this argument, if you wish, for

21

1 whatever appeal you may want to take but
2 you're not going to persuade me. And I don't
3 think you'd persuade any bankruptcy lawyer in
4 the country.

5 MR. LAURIA: Well, Your Honor, in
6 paragraph 51 of the debtor's motion, they tell
7 us all exactly what everybody's going to get
8 in this case. And I think it's less than

9 coincidence that when the debtors filed this
10 motion, they also issued a press release which
11 they filed with the SEC, under Form 8-K,
12 detailing the labor transition strategy. How
13 they intend to reorganize their business and
14 how the debtor's labor strategy dovetails with
15 implementation of their overall reorganization
16 strategy.

17 Based on the foregoing, there can be
18 little doubt that the debtors, with this
19 motion, know exactly how they intend to
20 reorganize their business, what they believe
21 the implications are and that the relief
22 sought in this motion is the engine that
23 drives all of it.

24 THE COURT: Have you talked to your
25 friend who represents Wilmington Trust on that

22

1 point?

2 MR. LAURIA: No, Your Honor.

3 THE COURT: Okay. Listen, you're
4 trying my patience. I know you think this is
5 a great argument. I've read your papers.
6 I've considered it. I've read the cases. And
7 there are too many people here to go over this
8 again.

9 MR. LAURIA: Well, Your Honor, I

10 don't mean to be disrespectful --

11 THE COURT: Well, I know you don't.

12 But I'm telling you, stop it.

13 MR. LAURIA: Can I --

14 THE COURT: You can tell me that

15 it's important. Just don't tell me it's a

16 Chapter 11 plan.

17 MR. LAURIA: Well, it is important,

18 Your Honor. In fact, I think the Ormat case,

19 which is relied on by the debtors in their

20 papers, is actually instructive. In Ormat,

21 what the debtor's did was they sought

22 rejection in connection with consummation of

23 their plan. And indeed, we were first alarmed

24 because that was the only case we could find

25 when we read the decision that talked about

23

1 the concept of conditional rejection.

2 So we pulled the motion that the

3 debtors filed. And in fact the motion -- the

4 conditionalness of the relief sought was just

5 on the hearing on the rejection of request

6 commencing without having a signed deal with

7 the unions. And that's the farthest anybody

8 ever got with the concept of a conditional

9 rejection in all of the cases that we read.

10 And we think we read them all.

11 But I think what's important is, in
12 Ormat, the rejection was part of the plan
13 process and the question that we are asking
14 the Court to consider is why disaggregate
15 something as important to this case from the
16 plan process when interim relief is provided
17 by the statute if it's essential to the
18 continuation of the business or to avoid
19 irreparable harm. That's the question.

20 And, Your Honor, I think that the
21 issue of necessity, whether you view it as a
22 question of heightened scrutiny arising under
23 the business judgment test in the cases that
24 suggest the bigger the issue is the higher the
25 scrutiny is or if you view it as checking

24

1 necessity under 1113, the question still comes
2 down to not only is it necessary for
3 reorganization but why is it necessary now?

4 There must be a time component to
5 that question and the debtors, in their
6 papers, in all of the declarations, have only
7 attempted to come up with one answer. Which
8 is we're burning cash. We can't make it.
9 That question needs to be plumbed to see if
10 that's an appropriate -- whether the Court

11 wants to view that as an appropriate business
12 justification under 363 or under the necessity
13 test under 1113. That's the question that we
14 have to answer --

15 THE COURT: Okay.

16 MR. LAURIA: Because certainly it
17 would be better. I don't think that the Court
18 could debate that it would be better for all
19 constituencies if this magnitude of relief
20 were incorporated in a plan process because of
21 all the due process that the plan process
22 includes, all of the opportunities for
23 stakeholder input and the ability to hopefully
24 get to consensus before we walk into the
25 courtroom. Or if not consensus in toto, at

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1 least as much as possible.

2 Now, Your Honor, we also think that
3 it's important that the debtors asked for
4 blank check rejection authority. I understand
5 that that request may have been rendered moot
6 by the Court's earlier ruling that -- at your
7 ruling on this motion; it's either rejected or
8 not.

9 But I think the fact that the
10 debtors asked for the relief the way they did

11 is important because it indicates a view that
12 the debtors maybe really don't need relief
13 now. Because what the debtors have
14 represented is their intention, is to maintain
15 the status quo and keep negotiating in hopes
16 of a deal taking shape later. And our
17 question is which way is it? Do they need the
18 relief or don't they? It's got to be one or
19 the other. They can't have both.

20 THE COURT: Well, we'll see what the
21 evidence shows on that. I think Mr. Simon may
22 have gotten the other reason why they were
23 moving as they moved.

24 MR. LAURIA: Your Honor, to the
25 point of -- just responding briefly to the

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1 Court's comment regarding the effect of
2 rejection. In particular, I noted that in the
3 Court's view the distinction is semantic and
4 that the debtor is permitted to continue
5 performing after the Court enters an order of
6 rejection.

7 We think this is problematical in
8 two respects. Number one, the debtor's
9 continued performance, at levels that are
10 above the amount that the debtor's purport to
11 have determined to be reasonable, is

12 gratuitous. It's not the performance of a
13 legal obligation at that point. It is, in
14 effect, a gift. And it's very hard for us to
15 get comfortable with the idea that a debtor
16 can provide such a gift at a time when it is
17 also saying it can't pay its creditors in full
18 and it's going to wipe out its shareholders.

19 THE COURT: Well, obviously they
20 have their fiduciary duties. They would only
21 do it if there was a good reason to do it.

22 MR. LAURIA: Well, Your Honor, we
23 think that the distinction is actually maybe
24 not semantical but that rejection means
25 rejection. And that at that point in time, if

27

1 the debtor wants to continue performing, they
2 need to get some relief from the Court to be
3 able to do so.

4 The second concern we have with that
5 notion is that rejection is a --

6 THE COURT: What would they pay
7 people in the meantime?

8 MR. LAURIA: Pardon me?

9 THE COURT: What would they pay
10 people in the meantime?

11 MR. LAURIA: They would presumably

12 implement their proposal which they have put
13 on a great deal of evidence -- or purport to
14 offer a great deal of evidence, saying they've
15 determined, in all respects, that that's
16 reasonable and appropriate.

17 THE COURT: Okay.

18 MR. LAURIA: The second concern that
19 we have about this potential continued
20 performance in the face of rejection is that,
21 as a matter of law, rejection does equate to
22 breach of the agreement. And it could be
23 argued by GM that that breach triggers not
24 only its guarantee obligations, but also its
25 indemnity rights which would put the other

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1 stakeholders in the worst of all worlds. The
2 debtor would be continuing to spend money at
3 the high levels under the existing agreements
4 and incurring the multibillion-dollar claim
5 under the Employee Matters Agreement to GM.
6 So it would be a lose-lose. So we're very
7 troubled by the potential scenario that
8 rejection could permit continued performance
9 under the contract.

10 And, in fact, we think, Your Honor,
11 for all the reasons that a debtor should not
12 have back-pocket rejection authority delegated

13 to it by the Court, the debtor should not be
14 able to continue performance after the court
15 order's rejection.

16 Now, finally, I want to talk briefly
17 about the direct statutory issues. Unlike
18 section 365, sections 1113 and 1114 impose
19 rigorous hurdles a debtor must clear in order
20 to reject a collective bargaining agreement or
21 to modify retiree benefits. Recognizing that
22 these matters call into play important
23 nonbankruptcy policies and interests, Congress
24 decided to make it harder for a debtor to get
25 relief than with respect to a run-of-the-mill

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1 executory contract.

2 In fact, whereas under 365 the
3 determination of whether or not the contract
4 is burdensome is commended to the debtor's
5 sound business judgment, the determinations as
6 to whether or not the debtor has satisfied the
7 hurdles set forth in 1113 for rejection of a
8 collective bargaining agreement are entrusted
9 to the Court. It is the Court's decision, not
10 the debtor's.

11 Now, the breadth and equitable
12 nature of the statutory inquiries imposed by

13 these two statutory provisions suggest a fact-
14 intensive analysis that must be customized to
15 the facts and circumstances of each particular
16 case. Based on the relevant facts and
17 circumstances here, as we believe they'll be
18 established, the debtors are not entitled to
19 the relief sought at this time.

20 Our focus is on three elements of
21 the debtor's evidentiary burden that apply
22 more or less equally with respect to the
23 request to respect the CBAs and also to modify
24 retiree benefits.

25 Number one, the debtors must prove

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1 that they have made a modification proposal
2 that is necessary to permit reorganization.
3 Number two, they must establish that their
4 proposal assures that all affected parties
5 will be treated fairly and equitably and
6 number three, the debtors must establish that
7 the balance of the equities clearly favors
8 granting the requested relief.

9 As to the issue of necessity, I find
10 it hard to believe, but some courts have
11 attempted to draw a distinction between relief
12 that is necessary to a plan as compared to
13 relief that would be essential to a plan.

14 But all cases that have addressed
15 the issue, including Carey and its progeny in
16 the Second Circuit, seem to agree that the
17 focus is to be on the big picture, not the
18 short term.

19 In an attempt to address the big
20 picture issue, the debtor's proffered evidence
21 focuses on anticipated losses over a five-year
22 period under their so-called steady-state
23 projections which assume that wages and
24 benefits are paid at the current levels
25 throughout the period.

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1 This evidence falls flat for two
2 reasons. One, it ignores the fact that the
3 debtor's existing labor obligations expire in
4 September and October of 2007. As such,
5 assuming that at some point in the next 16
6 months negotiations reach what under the labor
7 law is called impasse, at the agreement's
8 expiry the debtors will be free to impose the
9 exact changes they now seek with the same
10 attendant risk, a labor strike.

11 Two, the debtors ignore the fact
12 that they are well ahead of plan so far this
13 year and in fact are 500 million dollars

14 positive cash to plan since the beginning of
15 the year, calling into question the
16 reliability of the debtor's predictions of
17 massive losses.

18 But in an effort to retort, the
19 debtors in their supplemental declarations
20 have come back to assert that the positive
21 results of the first quarter should be
22 disregarded and that they cannot survive until
23 the expiry of the CBAs. This short-term
24 focus, however, while perhaps a basis for
25 relief under 1113(e) and 1114(h), if correct

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1 and valid, a fact that has been vigorously
2 challenged by the UAW's financial advisor,
3 nevertheless does not establish that permanent
4 relief is necessary for reorganization.

5 The fact is, without a complete plan
6 on the table, given the primacy of labor
7 issues in this case and the fact that the CBAs
8 expire in little over a year, it is
9 effectively impossible for the debtors to
10 clear this hurdle.

11 Surely, the concept of necessity or
12 business judgment carries with it a timing
13 component. Why do the debtors need permanent
14 relief now, not later? Why isn't interim

15 relief adequate so that permanent relief can
16 be considered in the context of a plan?

17 The failure to answer these
18 questions should doom the motion. The courts
19 have suggested that fair and equitable to all
20 affected parties requires a showing that the
21 burdens of the reorganization are being
22 similarly borne by every constituency.

23 Unfortunately, none of the cases
24 provide any real guidance regarding the
25 application of this wily concept. It could be

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1 argued that from a strictly statutory
2 construction perspective, as is arguably
3 required by the Supreme Court in *Laney*, that
4 fair and equitable means the absolute priority
5 rule must not be defeated by the proposal.
6 Under this approach, the debtor's proposal
7 would clearly fail. It provides a gift to GM
8 in the form of a multi-billion dollar
9 indemnity claim, for paying OPEB in perpetuity
10 even though the debtors are only obligated for
11 a little more than a year, at the expense of
12 creditors, whose recovery is materially
13 diluted and shareholders whose interests are
14 at risk of being wiped out.

15 However, even taking a looser
16 approach to the test, does the proposal fairly
17 allocate the cost of reorganization? The
18 presence of a multi-billion dollar gift to GM
19 would still seem to suggest a negative answer.

20 One point I want to make sure to
21 address, in the fact that I call this a gift
22 to GM, the Court should go back to the spin
23 documents and realize that the debtors
24 received no benefit in exchange for agreeing
25 to indemnify GM for the price it had to pay to

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1 the union for the benefit it saw for itself of
2 accomplishing the spin-off in terms of paying
3 OPEB into perpetuity, even though Delphi was
4 only legally obligated to pay it for a limited
5 term.

6 Now, that fact, the absence of
7 consideration to Delphi, combined with
8 statements of the time, contemporaneous
9 statements contained in the S(1)(a), filed by
10 Delphi at the time, suggesting that Delphi's
11 capital may well have been inadequate to meet
12 its legacy labor costs and its other capital
13 requirements, sounds like prima facie evidence
14 of the avoidability of those obligations. And
15 yet, it is those obligations that rejection

16 now puts squarely on equal footing with the
17 other creditors and ahead of the company's
18 shareholders.

19 THE COURT: Why would that be the
20 case if the original -- according to your
21 logic, if the original transaction was
22 referable to a transfer, why would the
23 resulting claim not also be tainted with the
24 same --

25 MR. LAURIA: Your Honor, it may well

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1 be and I suspect there will be litigation over
2 these issues as some point. The problem is
3 we're all being kind of forced to put the cart
4 before the horse. You know, the debtor's
5 making the move and now we're going to have to
6 go do the litigation after the fact and see,
7 you know, how the dice come up.

8 This is particularly problematical
9 when you take into account the fact that if
10 the debtors sought this relief in the fall of
11 2007 while the strike risk would be the same
12 as it is today, the GM claim would go away
13 because the exposure to the GM claim falls
14 away 30 days after the expiry of the existing
15 CBAs.

16 THE COURT: As would the guarantee,
17 right?

18 MR. LAURIA: Correct, Your Honor.

19 THE COURT: So, the employees would
20 not have the benefit of the guarantee?

21 MR. LAURIA: Correct.

22 THE COURT: Okay.

23 MR. LAURIA: If the relief doesn't
24 fail because of these problems, then it
25 should, nevertheless, fail under 1113(c)(3)

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1 and 1114(g)(3). The balance of the equities
2 does not clearly favor relief.

3 Indeed, Your Honor, we believe the
4 exposure of the estate to the multi-billion
5 dollar gift to GM, combined with the potential
6 massive delusion of creditors in the
7 elimination of old equity, would on its face,
8 suggest that the equities clearly weight
9 against relief.

10 Add to that the notion that the
11 labor transformation in a labor transformation
12 case should at least arguably be implemented
13 as part of a plan.

14 Add to that the fact that the CBAs
15 terminate in just over a year, clearing the
16 way for the implementation of the debtor's

17 proposal without the GM gift.

18 Add to that the fact that according
19 to the debtor's old benefits expert, Mr.
20 Williams, the cost from a benefit's
21 perspective, of waiting would only be about
22 300 million dollars.

23 And add to that the fact that the
24 debtors have offered no explanation as to why
25 permanent relief is required now even though

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1 interim relief is available. The answer
2 should be manifest. Permanent relief is not
3 now appropriate.

4 THE COURT: Just before you sit
5 down, I didn't see it in the papers on
6 standing, particularly, but do you have any
7 cases where a court, in applying
8 1113(b)(1)(A), the fair and equitable
9 standard, applied it other than in respect --
10 in the perspective of how the union is being
11 treated?

12 MR. LAURIA: No -- well, Your Honor,
13 I think that they all address the need to
14 determine that the cost of the reorganization
15 is being fairly spread among all
16 constituencies, not just the union.

17 THE COURT: Right.

18 MR. LAURIA: I think all the cases
19 say that. There's one case that actually
20 criticizes the suggestion that fair and
21 equitable means fair and equitable in the
22 traditional sense. Noting that that would
23 suggest you can't do an 1113 motion outside of
24 the plan process. But I know of no authority
25 for the narrow proposition that the Court

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1 asked about.

2 THE COURT: Okay.

3 MR. LAURIA: Thank you.

4 MR. FOX: Good afternoon, Your
5 Honor. Edward Fox from Kirkpatrick & Lockhart
6 Nicholson Graham, on behalf of Wilmington
7 Trust Company. Your Honor, I'll be very
8 brief. As we explained in our limited
9 objection, our concern is that the cost of the
10 debtor's proposal to the unions of what it is
11 doing will be
12 borne by Delphi Corporation, parent
13 corporation for our bonds, our claims, while
14 the benefits will redound to the subsidiary
15 entities, the operating entities in the U.S.
16 through the lower wage rates and other
17 benefits that the debtors at those levels

18 would hope to receive.

19 As a result of that, our view is
20 that the Court, on an entity-by-entity basis,
21 needs to look at whether or not the proposal
22 is fair and equitable.

23 In response to that, the debtor
24 states, in its reply, in a footnote on page 9
25 and I quote, Wilmington Trust ignores the cost

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1 Delphi Corporation, et al.
2 to the entire corporation -- and I emphasize
3 the words entire corporation -- of not
4 reaching an agreement, particularly the cost
5 of a potential strike.

6 The problem is here, there isn't one
7 single entire corporation. There are 43
8 separate legal entities, each of which is a
9 debtor in its own case, although they're
10 administratively consolidated, they're not
11 substantively consolidated. And Mr. Sheehan's
12 declaration indicates that even at the
13 subsidiary levels, the creditors of those
14 entities will not be paid 100 cents on the
15 dollar, which means that Delphi Corporation
16 has no equity in these underlying entities and
17 therefore it will not benefit as a result of

18 increased valuations at the subsidiary level.

19 Accordingly, in reviewing this and
20 in looking at the evidence as is presented to
21 you, we'd simply ask you to bear in mind the
22 fact that there are separate legal entities
23 involved here and each of those rights must be
24 respected and the debtor has to show that its
25 business judgment is appropriate with respect

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1 Delphi Corporation, et al.

2 THE COURT: Okay.

3 MS. STEINGART: Good afternoon, Your
4 Honor. I have very brief opening remarks
5 because I am not as -- Bonnie Steingart from
6 Fried, Frank on behalf of the official
7 committee of equity holders. My remarks will
8 be brief because we are not yet up to speed,
9 Your Honor.

10 We had requested of Counsel whether
11 an adjournment would be appropriate. We were
12 informed it would not be appropriate and we
13 certainly do not want to make these
14 proceedings more complicated and difficult
15 logistically than they are.

16 So we are prepared to go forward.
17 We will play catch-up as best we can and we'll
18 address ourselves to the issue that the Court

19 has highlighted for the committees this
20 morning and that is the exercise of the
21 debtor's business judgment.

22 I wanted to introduce to the Court
23 my partner, Debra Torres, who will be here on
24 behalf of the equity committee as well, and
25 make one small request to the extent that it

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1 Delphi Corporation, et al.
2 we will be proceeding today and we came on
3 board about 8:00 P.M. last night, I would ask
4 that, to the extent that we believe that there
5 is material cross-examination that we're not
6 able to do of witnesses presented this week,
7 that we have the opportunity to consult with
8 debtors and counsel for the unions and the
9 Court to see if anyone -- if it is absolutely
10 necessary, Your Honor, to be brought back on a
11 very, very limited basis. And we would,
12 hopefully, try not to have this happen at all
13 but just in terms of being able to protect the
14 committee and to have an opportunity, if there
15 are witnesses here that are key to the issue
16 of business judgment. We'd like that small
17 opportunity. Thank you.

18 THE COURT: All right. Before we go

19 further, I see there's still some people
20 standing. If you do want to sit down and rest
21 your feet, you can go down the hall to the
22 other courtroom. I'm told that the sound and
23 the temperature are both better there than
24 here. So, you might want to consider doing
25 that. Okay, Mr. Butler.

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1 Delphi Corporation, et al.
2 to the debtor's evidentiary case. Before
3 doing that, I thought it might be appropriate
4 Your Honor, to get some guidance from the
5 Court on a couple of issues. Does the Court
6 have a view as to when the Court's going to
7 end tonight?

8 THE COURT: Well, I can go pretty
9 late tonight. I can go till 7:00. I would
10 prefer ending tomorrow earlier and I'm happier
11 to begin earlier too. I can begin at 9:00
12 promptly and go till about 5:00 tomorrow.

13 MR. BUTLER: So, unless the Court
14 otherwise directs us, we'll presume we'll go
15 till 7:00 tonight, start at 9:00 in the
16 morning, continue until 5:00 tomorrow night
17 and then I think our next day is Friday the
18 12th.

19 THE COURT: That's right.

20 MR. BUTLER: And when does the Court
21 want to start then?

22 THE COURT: Well, I had it down for
23 10:00 -- do we have anything else on Friday?
24 I thought that -- no it was Thursday. We'll
25 see how it goes on Wednesday. I may be free

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1 Delphi Corporation, et al.

2 MR. BUTLER: Your Honor, the other
3 point that was made in the report we submitted
4 to chambers, that all the parties had asked me
5 to bring up was a recognition that it is
6 unlikely that the debtors and the unions and
7 the other objectors will finish the case and
8 submit it to Your Honor by the end of the
9 week. And that there will be a need for
10 additional trial dates.

11 THE COURT: Well, given all the
12 witnesses that just you detailed, I think
13 that's right. And I know the unions have
14 their witnesses too.

15 MR. BUTLER: All right. The -- I
16 think, Your Honor, I may -- I think I have
17 this right. There are, I think, 34 witnesses
18 that have been identified by the parties. Of
19 those, 13 belong to the company and 21 belong

20 to the objectors. And at least, for the
21 planning of schedules, Counsel wanted to find
22 out if there's any guidance the Court can give
23 to us as to future dates for the balance of
24 the month.

25 THE COURT: That's what I thought,

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1 Delphi Corporation, et al.
2 because it's Memorial Day, that's why. Well,
3 I actually have Monday the 15th free and then
4 it gets pretty backed up. We have a Delphi on
5 this day on the 24th and there's nothing else
6 on the calendar that day. But you probably
7 have other motions on for then. And the 26th
8 is free but that's the Friday before Memorial
9 Day weekend. Similarly, May 30th is free.
10 That's the Tuesday after Memorial Day weekend.
11 And then we have your GM motion on Friday the
12 2nd of June. I do have all day, also, June
13 the 5th.

14 MR. BUTLER: Which I think was
15 reserved for GM. I think GM is June 2nd and
16 June 3rd.

17 THE COURT: Right. Now, I think
18 there is some benefit, particularly given Mr.
19 Simon's remarks about the UAW's desire to
20 negotiate, that we not rush through the entire

21 hearing. So, you've heard those days. Maybe
22 you can work them out between yourselves but I
23 myself might, if you came back to me saying
24 that you'd end this before the last week of
25 May, say well, no you're not because I think

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1 Delphi Corporation, et al.
2 only meet, as I'm going to suggest, this
3 Thursday, but also meet and go over requests
4 and concepts and the like for a longer period.

5 MR. BUTLER: Your Honor, we will
6 take that up with the parties and try and
7 report back tomorrow on that. I hear the
8 Court's guidance and I think that may make
9 some sense not to do the 15th as a result of
10 that but we'll talk to the Counsel and report
11 back tomorrow.

12 THE COURT: Okay.

13 MR. BUTLER: And with that, and
14 while it's quiet in the courtroom, if I could
15 just ask Counsel who are representing actual
16 participants in the hearings to please wait
17 for about five minutes at the end of the day
18 so that we can have that meeting and confer so
19 I can report back. That would be helpful. So
20 when we're done, let's just spend five minutes

21 together.

22 Your Honor, moving now to the
23 debtor's direct case. The first witness is
24 David L. Resnick. His declarations, which I
25 move into evidence, subject to cross-

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1 Delphi Corporation, et al.
2 Exhibits 18 and 19 of the joint trial book.
3 MR. BAUMSTEIN: Your Honor, just
4 before we get there, if I may, Doug Baumstein
5 from White & Case, on behalf of Appaloosa,
6 Wexford, Partas and Lampe Conway. We have
7 signalled to the debtors that we intended to
8 make this objection but we do have an
9 objection to both Mr. Resnick's declaration
10 coming in as well as to the declarations of
11 all witnesses other than Mr. Williams who we
12 were permitted to take the deposition of, on
13 the grounds that debtor did not permit us to
14 participate in the depositions with respect to
15 some of these witnesses -- with respect to all
16 of these witnesses, other than Mr. Williams.
17 In some cases we were permitted to
18 be in the room. In other cases no depositions
19 were taken. Additionally, debtors did not
20 produce to us a 30b6 witness on several topics
21 that were directly related to the order of

22 proof here is -- including on issues that
23 focus on the business judgment aspects of the
24 case, that the Court has already highlighted
25 and perhaps in -- and those include topics

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1 Delphi Corporation, et al.
2 the CBAs now, as opposed to after the
3 expiration of the GM indemnity and the current
4 bargaining agreements, the calculation of
5 potential claims that may result from the
6 rejection, the economic analysis of the affect
7 the proposals would have, whether they were
8 implemented as of October 1, 2006, or after
9 the expiration of the CBAs and indemnity
10 obligations and the economic analysis
11 performed with respect to the competitive
12 benchmark proposals and GM consensual
13 analysis.

14 It is our position that it is
15 prejudicial to go forward without having an
16 opportunity to have taken depositions of these
17 individuals. Additionally, I would note, for
18 example, for Mr. Resnick, he first -- the
19 objection deadline in this case was April
20 19th. His objection -- his declaration came
21 in on May 25th supp -- I'm sorry, April 25th

22 with a supplement on May 2nd and just by way
23 of example, Mr. Eisenberg, who did not put in
24 any declaration initially at March 31st, when
25 debtors first moved, first put in a

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1 Delphi Corporation, et al.
2 of the issues we have here. It was our
3 position that a 30b6 witness was more
4 appropriate because it would give debtors the
5 opportunity to identify one witness to speak
6 on behalf of the company so that we avoid
7 being whipsawed by having one witness say one
8 thing and another say another. But we were
9 never permitted to have these depositions. We
10 think that it is prejudicial to go forward
11 without giving us an opportunity to take these
12 depositions.

13 THE COURT: Well, let's address the
14 Resnick one first because that's the one in
15 front of me. This, of course, was all the
16 subject of a chambers conference that we had -
17 - when was it? Two weeks ago?

18 MR. BAUMSTEIN: Yeah, I believe the
19 date was Tuesday May 2nd.

20 THE COURT: Okay. And it was my
21 view then, and continues to be, that
22 particularly given the primary focus of this

23 litigation, which was with the unions and
24 their agreements with the debtors in respect
25 of how to deal with, in this case, expert

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1 Delphi Corporation, et al.
2 depositions that I did let you take, which
3 addressed the claim issue and the OPEB/GM
4 claim issue, that to manage the case properly
5 and not to prejudice either the unions or the
6 debtors in their discovery, that the
7 shareholder group's request for additional
8 depositions had to give way, particularly
9 given the issues they had raised and the level
10 of information that they had received. So on
11 that basis I'll deny the -- or overrule the
12 objection to the admissibility of the two
13 Resnick affidavits.

14 MR. BAUMSTEIN: Okay. And just to
15 clarify, because one issue -- just Mr.
16 Williams was not actually familiar with the
17 working of the GM indemnity obligation
18 although he was familiar with the calculation
19 of what we believe a claim might be, he was
20 able to testify. And just for case management
21 purposes, as I first made --

22 THE COURT: Well, when you say the

23 working of the GM obligation, what do you mean
24 by that?

25 MR. BAUMSTEIN: What I'm talking

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1 Delphi Corporation, et al.
2 indemnity agreement. He had never really --
3 he had never analyzed it. He has looked,
4 obviously --

5 THE COURT: Isn't it -- it's a
6 contract, right?

7 MR. BAUMSTEIN: That's right. But
8 he had never been asked to look at anything
9 with respect to the claims that would be
10 generated as a result of this -- we had asked
11 for Mr. Williams that there are certain
12 issues, obviously with OPEB that are a concern
13 of the shareholders.

14 THE COURT: Well, I haven't looked
15 at it for a while but does Mr. Resnick deal
16 with that issue?

17 MR. BAUMSTEIN: Well, Mr. Resnick
18 touches somewhat on issues of what is the
19 appropriate timing to have made this motion.
20 It looks like he has some understanding of
21 what claims may come up there, based on some
22 of the very few documents that we got in
23 response to Your Honor's order at the chambers

24 conference.

25 THE COURT: I don't see him

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1 Delphi Corporation, et al.

2 all in these two declarations.

3 MR. BAUMSTEIN: I don't think he
4 discusses the indemnity obligations. I think
5 he discusses issues such as the timing of the
6 motion and the necessity for moving now which
7 is one of the issues that we'd identified.

8 THE COURT: All right. Again, my
9 ruling stands.

10 MR. BAUMSTEIN: Okay. And just in
11 terms of case administration for the record,
12 obviously I had raised this objection with
13 respect to each declaration. Do you want me -
14 - should it be re-raised with each one or --

15 THE COURT: Yes.

16 MR. BAUMSTEIN: Okay. Thank you,
17 Your Honor.

18 MR. BUTLER: Your Honor, now
19 proceeding with the debtor's case-in-chief, I
20 would call for cross-examination, David L.
21 Resnick to the stand and with the admission of
22 his declarations, Exhibits 18 and 19, subject
23 to cross-examination.

24 THE COURT: Okay. All right.
25 You've already agreed with the union that

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1 MR. KENNEDY: Yes.

2 THE COURT: Haven't you agreed to
3 the admissibility of all the documents in the
4 binders?

5 UNIDENTIFIED SPEAKER: No, Your
6 Honor.

7 MR. KENNEDY: Not all the documents.
8 The declarations are all --

9 THE COURT: I'm sorry, the
10 declarations, excuse me.

11 MR. KENNEDY: Yes. The declarations
12 are acknowledged to be --

13 (The Declaration of witness Mr. Resnick was
14 hereby admitted as Exhibit 19 for
15 identification, as of this date.)

16 (The Declaration of witness Mr. Resnick was
17 hereby admitted as Exhibit 18 for
18 identification, as of this date.)

19 THE COURT: So those two
20 declarations, Exhibits 18 and 19 will be
21 admitted.

22 THE COURT: Right.

23 MR. BUTLER: And the order of cross-
24 examination, Your Honor will be, the IUE is

25 the initial cross-examination party and the

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1 UAW, the steel workers, then the IBEW and then
2 the operating engineer.

3 (Witness duly sworn.)

4 THE COURT: Could you just spell out
5 your name for the record?

6 THE WITNESS: Yes, Your Honor.

7 David L. Resnick, R-E-S-N-I-C-K.

8 CROSS EXAMINATION BY

9 MR. KENNEDY:

10 Q. Mr. Resnick, when was Rothschild
11 retained as an advisor by Delphi?

12 A. Rothschild was retained on May 1st
13 of 2005.

14 Q. And you began working on the Delphi
15 account at that point?

16 A. Yes.

17 Q. Isn't it a fact that at the time
18 Rothschild became an advisor for Delphi,
19 Delphi had already developed a financial
20 projection called a "base case"?

21 A. Yes.

22 Q. And Delphi had created that base
23 case financial projection before Rothschild
24 became involved with Delphi, correct?

25 A. Delphi created that in the context

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1 of its bank financing. It was --

2 Q. I asked you if they had created it
3 before Rothschild became involved with Delphi.

4 A. Yes.

5 Q. How many years did that base case
6 financial projection go out from the year
7 2005?

8 A. I believe it went out several years.

9 Q. Did it go out to 2010?

10 A. I don't recall.

11 Q. When you say several years, did it
12 go out to at least 2008?

13 A. That would be my recollection.

14 Q. And I take it that when Rothschild
15 became engaged in May of 2005, you advised
16 Delphi to develop a downside case for
17 financial projections. Is that correct?

18 A. I don't think we described it,
19 necessarily as a downside case, although that
20 was ultimately how the case became referred to
21 internally. What we advised Delphi was in the
22 context of the analysis that we were going to
23 be doing with them, given Delphi's performance
24 versus the base case, it would be appropriate
25 to take another look at the base case and

1 develop an alternative case, a more
2 conservative case, which the company referred
3 to internally as a downside case.

4 Q. Did you read your initial
5 declaration in this case before it was
6 submitted to court, the declaration dated
7 April 25th?

8 A. Yes.

9 Q. Isn't it a fact that in paragraph 21
10 it states, "Rothschild advised Delphi,
11 following its review of these projections,
12 that the company should develop a quote
13 downside case"?

14 A. Yes. That's what it says.

15 Q. Okay. I assume that's true. That's
16 why you signed it, correct?

17 A. That's correct.

18 Q. And isn't it a fact that the
19 downside case scenario that you recommended is
20 what has now become known as the steady state
21 scenario?

22 A. No. That's not correct.

23 Q. Did the downside case scenario that
24 you projected; did it identify a particular
25 amount of financial loss that Delphi would

1 experience through the year 2010?

2 A. Well, first the company developed
3 the downside case, not Rothschild. And
4 secondly the -- what became known as the
5 downside case was a current reflection of the
6 company's performance used for the analyses we
7 performed in looking at the various
8 alternatives for the company. And that was
9 the basis for the development of what became
10 known as the steady state case in the fourth
11 quarter of 2005.

12 Q. All right. So I'm trying to get the
13 sequence in order. When Rothschild came on to
14 the scene at Delphi, there was a financial
15 projection called the base case, correct?

16 A. Correct.

17 Q. And you -- Delphi suggested that a
18 downside case be developed and -- excuse me,
19 Rothschild suggested a downside case be
20 developed and Delphi went ahead and did that,
21 correct?

22 A. Correct.

23 Q. And the next -- using that downside
24 scenario, they created the steady state
25 projection. Isn't that also correct?

1 A. Well, I think there's some
2 intervening events from the development of the
3 downside case to the steady state case, the
4 most important of which was that the company
5 filed for Chapter 11 protection in October and
6 as a basis of that filing the company decided,
7 as most companies do when they file for
8 Chapter 11, to review their business plan and
9 come up with a business plan -- to come up
10 with a set of projections for five years that
11 reflected current performance from the time of
12 filing. And that became known as the steady
13 state case.

14 Q. When you first started advising
15 Delphi in May of 2005, isn't it a fact that
16 Delphi was internally discussing filing a
17 bankruptcy proceeding at that point?

18 A. No.

19 Q. No. How did the base case scenario
20 differ from a downside case?

21 A. The difference between the base case
22 and the downside case was that the downside
23 case reflected current performance. The base
24 case had been developed at the beginning of
25 '05, early '05 and the downside case was

1 developed roughly the middle of '05. The
2 company had suffered deterioration in its
3 earnings from GM's significantly declining
4 volume and from increased material costs and
5 those two critical items were reflected in the
6 revision that became known as the downside
7 case.

8 Q. And is it your understanding that
9 reliance on such downside cases is typical in
10 restructuring cases, such as we have here with
11 Delphi?

12 A. What we told the company when we
13 began work was that if you're analyzing
14 alternatives for their business, to reflect
15 the challenges the company faced, particularly
16 deterioration in GM's volumes, increased
17 material costs and the challenges the company
18 faced, based on its wage and legacy
19 obligations and was going to think about
20 transforming alternatives for its business, it
21 should come up with a set of projections that
22 were conservative and prudent because the
23 business would be undergoing significant
24 change. And that is typical for a company
25 going through some form of restructure.

1 Q. So it's your understanding that the
2 base case projections that they had made were
3 neither conservative nor prudent? Is that
4 your understanding?

5 A. We were not involved in the base
6 case projections.

7 Q. You did review them though, correct?

8 A. We did review them when we were
9 retained.

10 Q. And you reviewed the assumptions
11 that underlie that base case projection.

12 A. Generally.

13 Q. And your advice to Delphi was to
14 make those assumptions more conservative?

15 A. No. Our advice was we noted the
16 difference in actual performance of the
17 company from the base case and we suggested if
18 we were being asked to work with them on
19 strategic alternatives for its business, they
20 should reflect the deterioration in its
21 business in another case that was more
22 realistic with the current operating
23 environment that they faced. And that was the
24 genesis of the downside case.

25 Q. When was the steady state analysis

1 published or discussed publicly by Delphi?

2 A. Work on the steady state analy --
3 the steady state case began in the fourth
4 quarter of 2005.

5 Q. And when was it finished?

6 A. Roughly January of '06.

7 Q. Is it fair to say that it was rolled
8 out to the --

9 A. Oh, I'm sorry. It was presented in
10 January '06, but internally, it was finished
11 in probably the winter of '05.

12 Q. Do you know when it was presented to
13 the Delphi board of directors?

14 A. I believe in the November/December
15 timeframe.

16 Q. And the first quarter against which
17 we can measure the accuracy of the steady
18 state scenario was the first quarter of 2006,
19 correct?

20 A. Correct.

21 Q. And as has been mentioned, in the
22 first quarter in which that steady state
23 scenario has been put to the test of actual
24 performance, Delphi is running more than half
25 a billion dollars ahead of that steady state

1 scenario, correct?

2 A. Operating income is a half a
3 billion.

4 Q. Operating income, yeah.

5 A. Yes. Not cash.

6 Q. Okay. Do you know if the operating
7 income in the base case scenario, if applied
8 to the first quarter of 2006 would have been
9 accurate, under-performed or over-performed?

10 A. I don't know.

11 Q. Well I take it that when your firm
12 began working with Delphi you generated four
13 different strategic alternatives the company
14 considered. Is that correct?

15 A. Yeah. That's correct.

16 Q. And I assume, since you were
17 presenting all four you regarded each of the
18 four as a feasible alternative for the company
19 to consider to cure its long-term and current
20 financial difficulty?

21 A. A possible alternative, yes.

22 Q. And those scenarios were listed, A,
23 B, C, and D, is that correct?

24 A. Correct.

25 Q. And isn't it a fact that under the

1 scenario D that your firm developed, Delphi
2 would have attempted to work, over the long
3 term, within its existing framework and seek a
4 gradual transitions with its key unions to a
5 restructured state?

6 A. Scenario D was essentially what we
7 would call a business as usual case so the
8 company would continue to operate as it
9 currently exists within the framework of the
10 current Collective Bargaining Agreement which
11 expires in September/October of '07 and any
12 changes would be made at that time, as
13 business-as-usual.

14 Q. All right. And did scenario D
15 contemplate that the -- Delphi would go to its
16 existing unions before the expiration of the
17 current collective bargaining agreements and
18 seek early negotiations?

19 A. I believe if assumed that there
20 could be discussions prior to the expiration
21 of the agreement.

22 Q. Did scenario D contemplate an 1113
23 motion?

24 A. No.

25 Q. Was scenario D ever presented, or

1 that approach taken with respect to the IUE-
2 CWA, my client, on how to solve Delphi's
3 problems?

4 A. I believe the four alternatives may
5 have been presented but I --

6 Q. You don't know, in other words.

7 A. No, I don't know.

8 Q. Okay. What was the time frame over
9 which scenario D would have Delphi working out
10 its financial problems within the context of
11 the existing collective bargaining agreements?

12 A. Through and including the period
13 during which the current collective bargaining
14 agreements had to be renegotiated. So through
15 the fall of 2007.

16 Q. All right. Thank you.

17 CROSS-EXAMINATION BY

18 MR. SIMON:

19 Q. Did Delphi use its base case as the
20 source for discussions to refinance its debts?

21 A. I believe it did. We were not
22 involved in the debt refinancing.

23 Q. And did it produce a debt
24 refinancing?

25 A. The company --

1 Q. Those discussions?

2 A. The company did refinance its debt
3 in June of 2005.

4 Q. And that was after you had been
5 retained?

6 A. Correct.

7 Q. And what was the nature of the debt
8 refinancing?

9 A. The company had some upcoming
10 maturities and covenant issues in its existing
11 bank agreement, it is my recollection, and
12 negotiated with its lenders, JP Morgan and
13 Citibank, a refinancing of the existing debt,
14 which required significantly the company
15 moving from unsecured financing to secured
16 financing.

17 Q. And what was the amount of that
18 refinancing?

19 A. I believe it was approximately two
20 billion dollars.

21 Q. And was that the refinancing in
22 place until the debtor-in-possession financing
23 exercise?

24 A. Yes.

25 Q. And the company was also able to

1 achieve debtor-in-possession financing, was it

2 not?

3 A. Correct.

4 Q. And is it also correct that it has
5 not drawn upon that debtor-in-possession
6 finance capacity?

7 A. It's drawn on a portion, a term
8 piece of the --

9 Q. How much has it drawn now?

10 A. I believe 250 million dollars.

11 Q. And what is the total facility?

12 A. Approximately two billion dollars.

13 Q. Did your review of the base case
14 produce a conclusion that it had been
15 developed on a plant-by-plant, product-by-
16 product basis?

17 A. My recollection is that when we
18 looked at the base case, it was not done on a
19 plant-by-plant, product-by-product basis.

20 Q. Do you know whether the lenders in
21 the refinancing exercise, based upon the base
22 case, performed a due diligence with regard to
23 those projections?

24 A. I don't know.

25 Q. What did your review of the base

1 case consist of?

2 A. When a client retains us, what we

3 ask for is all copies of financial projections
4 that they're currently working with so we can
5 understand how management is looking at its
6 business in the future and the base case was
7 the most current version of the company's
8 projections. And we talked with the company
9 about that case, looked at how the company was
10 performing against that case and that's how we
11 began our work in May.

12 Q. And did you perform what you would
13 consider to be an in-depth review of the base
14 case?

15 A. I would not call it an in-depth
16 review because, as I mentioned earlier, we
17 looked at the performance of the company
18 versus the base case. It was below what was
19 projected and that led to discussions with the
20 company, that for the purposes for which we
21 were retained, which was to look at an array
22 of strategic options for its business, it
23 would be helpful to develop a set of
24 projections that reflected current
25 performance, particularly taking into account

1 a transformation which were the strategic
2 alternatives we were looking at. So our

3 attention focused on working with the Delphi
4 financial team on developing this alternative
5 set of projections for us to use for our
6 analysis, which we refer to as the downside
7 case.

8 Q. Did you conclude, on the basis of
9 your review, that the base case was
10 unattainable?

11 A. We concluded that current
12 performance was below that of the base case.

13 Q. And did you conclude that it was
14 unattainable?

15 A. We concluded that performance was
16 not in line with the base case and for the
17 purposes of our work we should work with the
18 company -- the company should work on another
19 set of projections.

20 Q. The base case included more than a
21 projection of the first quarter or the first
22 two quarters of '05. It produced a set of
23 projections going out, you believe, to 2008.
24 My question to you is --

25 THE COURT: Excuse me. Could you -

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1 - just stop whispering to each other. Okay.
2 Sorry.
3 BY MR. SIMON:

4 Q. My question to you is whether or not
5 you concluded that the base case which went
6 out to, you believe 2008, was unattainable?

7 A. We concluded that the company should
8 develop another set of projections that
9 reflected current performance.

10 Q. Surely you're capable of --

11 THE COURT: Could I ask you -- did
12 you consider whether it was attainable?

13 THE WITNESS: We did consider
14 whether it was attainable and we felt that the
15 base case was too aggressive for the purposes
16 for which we needed for our analysis.

17 BY MR. SIMON:

18 Q. Please. The Judge tried. I tried.
19 Surely you're capable of answering --

20 THE COURT: We know you felt it was
21 aggressive. Was it attainable?

22 THE WITNESS: It did not appear
23 attainable.

24 MR. SIMON: Thank you, Judge.

25 BY MR. SIMON:

1 Q. As an investment banker, you
2 maintain an ongoing relationship with major
3 lenders such as Delphi's lenders, do you not?

4 A. Yes. We work with them.

5 Q. And you consider Rothschild's
6 credibility with those lenders to be a matter
7 of some significance to Rothschild as an
8 institution, do you not?

9 A. Yes.

10 Q. Did you inform Delphi's lenders upon
11 reaching the conclusion that the base case
12 projections were unattainable, of that fact?

13 A. These lenders were not making a cash
14 flow loan. They were making a secured loan
15 and the value that they were focused on was
16 the underlying collateral for their loan.
17 They look at projections in the ordinary
18 course, to get a sense of how the company is
19 projecting, but the basis of the loan they
20 were making was secured. It was based on the
21 value of the assets, not the objective cash
22 flow. So that's why they were moving from
23 unsecured to secured, because of the turmoil
24 that Delphi was undergoing and the changes
25 that were occurring in the automotive industry

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1 at the time.

2 Q. Thank you for that observation. I
3 move that the response be stricken and ask
4 that the witness be directed to answer the

5 question as whether he had informed the
6 lending banks that Rothschild had concluded
7 the projections were unattainable.

8 THE COURT: Well, I'll deny the
9 first part of the motion, but you should
10 answer that question.

11 THE WITNESS: No, we did not.

12 BY MR. SIMON:

13 Q. Now, during the fall of '05, you
14 prepared the '06 to 2010 business plan,
15 correct?

16 A. No, we did not.

17 Q. When did that occur?

18 A. We did not prepare a business plan.

19 Q. The company prepared the plan,
20 correct?

21 A. Correct.

22 Q. And you reviewed the plan.

23 A. That's correct.

24 Q. And did you agree that the plan was
25 an appropriate basis for the company to go

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1 forward?

2 A. And can you just tell me which
3 specific plan you're referring to?

4 Q. Pardon?

5 A. Which plan -- I lost the beginning
6 of the question. Which plan are you referring
7 to?

8 Q. Tell me what plan was developed by
9 Delphi and reviewed by Rothschild in the fall
10 of '05.

11 A. The fall of '05, post filing for
12 Chapter 11 was what we referred to as the
13 steady state plan.

14 Q. Now, in developing the steady state
15 scenario, did Delphi conduct an in-depth
16 evaluation of each of its business on a plant-
17 by-plant basis?

18 A. I don't believe so.

19 Q. What was the nature of the plan that
20 was developed if it was not done on a plant-
21 by-plant basis?

22 A. Delphi develops its business plans
23 on a business unit or a product basis so the
24 financial team that's responsible for the
25 filing of rejections went back to the

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1 operating management of each of the businesses
2 and asked them to develop a set of projections
3 for their businesses, which they would
4 typically do, on a business-by-business basis.
5 And then the financial team compiled that on a

6 consolidated basis.

7 Q. And did Delphi conclude, and did you
8 agree that General Motors' loss of market
9 share reduced General Motor revenue, pressure
10 for price-downs, higher material costs and the
11 like will continue for the foreseeable future?

12 A. That's a complicated question.
13 Maybe, can you repeat that again?

14 Q. It was a complicated restatement of
15 your complicated paragraph 29 of your
16 declaration.

17 A. Okay.

18 THE COURT: Well, for my benefit, if
19 you could repeat it, because there were a
20 number of elements to it.

21 MR. SIMON: Okay.

22 BY MR. SIMON:

23 Q. Did Delphi conclude that the
24 economic trends leading to Delphi's current
25 crisis, described as first, General Motor's

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1 loss of market share. Did you conclude that
2 was likely to continue for the foreseeable
3 future?

4 A. Yes, we did.

5 Q. Reduce General Motor's revenues,

6 same question.

7 A. Yes.

8 Q. Pressure for price-downs, perhaps
9 you should explain what a price-down is,
10 unless the Court has already gathered that
11 from the material before.

12 THE COURT: Go ahead.

13 MR. SIMON: Would you like a
14 description?

15 BY MR. SIMON:

16 Q. Would you describe what a price-down
17 is, please?

18 A. Yes, a price-down is a requirement
19 of a customer to have the automotive part
20 supplier reduce prices on a product on an
21 ongoing basis over the length of the contract.
22 And we did conclude that those pressures, from
23 the OEM customers for price-downs would
24 continue during that period.

25 Q. And higher material costs as well?

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1 A. Correct.

2 Q. Material costs are a very
3 significant aspect of the costs to Delphi of
4 doing business, is it not?

5 A. They are a significant cost, yes.

6 Q. And under the steady state scenario

7 which Delphi prepared and you reviewed, Delphi
8 projected an operating loss of 8 billion
9 dollars and a net loss of 13 -- 12.9 billion
10 dollars over the 5 years from '06 to 2010?

11 A. Yes.

12 Q. And when did Delphi make that
13 projection?

14 A. As I mentioned earlier, those
15 projections were begun after the company filed
16 for Chapter 11, the fall of '05,
17 October/November period.

18 Q. And when were they concl -- when did
19 Delphi conclude its process?

20 A. My recollection, as I said earlier,
21 was some time November or early December when
22 they were presented to the Delphi board.

23 Q. And when did Rothschild perform its
24 review and analysis?

25 A. Contemporaneous with the time that

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1 Delphi was preparing the steady state
2 projections.

3 Q. Now, in much the same way as in '05
4 when you were retained, you looked at the base
5 case and at actual performance to see how
6 actual performance was measuring up against

7 base case projections and concluded that it
8 was not, that actual performance was below the
9 base case projection, correct?

10 A. I'm sorry. You're talking about
11 what time frame?

12 Q. Now I'm in '05 and now I'm going to
13 take you forward to '06. But I just want to
14 establish the base -- that's what you said you
15 did with respect to the '05 base case
16 differentiation from actual results, correct?

17 A. When we were retained in May?

18 Q. Yes.

19 A. Correct.

20 Q. Okay. Have you made a similar
21 analysis of actual performance under the
22 steady state scenario with actual -- I'm sorry
23 projected performance under the steady state
24 scenario developed in November and December of
25 '05 and actual performance in the first

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1 quarter of '06?

2 A. Yes, we've reviewed Delphi's
3 assessment of actual performance in the first
4 quarter, versus the steady state plan.

5 Q. And unlike the conclusion you drew
6 in '05, where actual performance was
7 significantly below projections, in the first

8 quarter of '05 actual -- I'm sorry of '06,
9 actual performance was significantly better
10 than the steady state projection, correct?

11 A. The first quarter of '06 was --
12 actual performance was better than the steady
13 state projection, yes.

14 Q. And one of the key elements of that
15 was that the material cost projection for the
16 first quarter of '06, made in the winter of
17 '05, was off by a significant amount, correct?

18 A. Made in the fall of '05, presented
19 in the winter of '05 to the board was off,
20 correct.

21 Q. Well, when you distinguish between
22 its development in the fall and its
23 presentation to the board in November, you're
24 not suggesting that before it's presented to
25 the board it's not looked at again, are you?

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1 A. No. I just wanted to be accurate
2 that it was developed at one time and then it
3 took some time to actually present it. It
4 didn't change but my point was those decisions
5 -- it was set, probably some time late
6 October, early November and then it was
7 subsequently presented. But it didn't change

8 in the end.

9 Q. In order of magnitude, the
10 difference in material cost for the first
11 quarter of '06 between that which was
12 developed in the fall and presented in
13 November of '05 and the actual first quarter
14 of '06 was what? 50, 100 million dollars?

15 A. I could look. There's -- one of the
16 exhibits goes through my --

17 Q. Does that strike you as being as in
18 the range --

19 A. My recollection was it was 90 some
20 million dollars.

21 Q. 90 some million dollars, thank you.
22 Now, there came a point when Delphi determined
23 and Rothschild agreed that steady state was
24 not a sustainable model and it was necessary
25 for Delphi to develop a different

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1 restructuring plan, correct?

2 A. Correct.

3 Q. And when did that occur?

4 A. That occurred around the time the
5 steady state model was projected to the Board
6 of Directors. It was clear, if you look at
7 the steady state projections, that that is not
8 a -- does not produce a viable business and it

9 supported the point that Delphi had to
10 transform its business in a meaningful way to
11 be profitable and it was -- the purpose of the
12 steady state was a building block for the
13 company to develop its transformation plan
14 that was announced in March. It took current
15 performance and projected that out several
16 years and a conclusion was the losses were
17 significant and dramatic and that the company
18 would have to make major changes in its labor
19 and benefits structure, in its overhead, in
20 pricing with its customers, to transform its
21 business. And at the time that the steady
22 state was presented, the company had begun
23 working on those changes and that led to the
24 other two projections that have been
25 discussed, what we refer to as the competitive

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1 benchmark and the GM consensual fund.

2 Q. And those were presented to the
3 unions in the end of March, correct?

4 A. They were formally presented to the
5 unions at the end of March, though elements of
6 each of those plans was discussed informally
7 with them sometime after January.

8 Q. Now, on November 28th of '05, Delphi

9 announced General Motors's agreement to
10 provide interim financial support to Delphi,
11 correct?

12 A. Correct.

13 Q. And Delphi began preliminary
14 discussions with GM and Rothschild to explore
15 potential financial participation in Delphi
16 restructuring, correct?

17 A. That's correct.

18 Q. And you, thereafter, conditionally
19 withdrew the competitive benchmark proposals
20 that had been presented to the unions,
21 correct?

22 A. Correct.

23 Q. And those -- that withdrawal was on
24 December 19th of '05, correct?

25 A. I believe that was the date, yes.

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1 Q. And between the withdrawal of those
2 proposals and March 24th of '06, there were no
3 proposals on the table from Delphi to the
4 unions, correct?

5 A. No. I disagree with that. I think
6 from the time GM -- we began our discussions
7 with GM, we had discussed alternative
8 proposals and those were shared in discussions
9 Mr. But -- Kevin Butler had with the unions

10 and they had various names to them, the zip
11 code plan, the step-down plan, that we were
12 trying to use our engagement with GM to help
13 develop alternatives for other proposals that
14 could result in a better result of a
15 reorganization on soft landings that were
16 better than the competitive benchmark proposal
17 that we had put on the table in November and
18 subsequently decided to withdraw.

19 Q. Are you suggesting that there were
20 actual proposals made by Delphi to the unions
21 during the interim between the withdrawal on
22 December 19th, '05 and the submission of
23 proposals on March 24th?

24 A. I'm using the word proposal, not in
25 a formal proposal but in discussions of other

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1 ideas that would involve GM support from the
2 time that the competitive benchmark was
3 withdrawn.

4 Q. I think you'll find that all parties
5 will have tried gingerly to stay away from
6 informal discussions and this is a statute
7 that deals with proposals. So you'll forgive
8 me if I ask you the question in a legal sense.
9 And that is whether between the withdrawal of

10 the proposals on December 19th, '05 and the
11 submission of formal proposals on March 24th
12 of '06, there were any proposals made by
13 Delphi to the unions.

14 A. The way you phrase the question, I
15 believe that's correct.

16 Q. Thank you. Now, is it a fact that
17 Delphi's withdrawal of its proposals on
18 December 19th was Delphi's effort to
19 facilitate discussions between General Motors
20 and the UAW for a consensual agreement that
21 would include GM financial support?

22 A. Yes.

23 Q. And those discussions, which did in
24 fact take place, produced the attrition
25 program announced on March 22 of '06, correct?

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1 A. The attrition plan was one element
2 that resulted from those discussions, yes.

3 Q. Delphi does intend to market its
4 non-continuing businesses, does it not?

5 A. Some of the non-continuing
6 businesses, it does plan to try to sell.

7 Q. What does it intend to do with those
8 it doesn't intend to try to sell?

9 A. They're -- of the businesses that
10 are considered non-core in the transformation

11 announcement, there are some Delphi said that
12 it will try to sell, it believes they're
13 saleable. There are some it believes are not
14 saleable and it will wind those businesses
15 down.

16 Q. But the ability to sell those
17 businesses that it intends to sell and the
18 ultimate amount of the proceeds it receives
19 from those sales, will be greatly affected by
20 the future labor cost structure achieved
21 either by agreement or through this court's
22 process, correct?

23 A. Correct. As well as the pricing it
24 will receive --

25 Q. I was going to -- that was going to

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1 be my next question.

2 A. All right. Okay.

3 Q. That is, the labor cost resulting
4 either from negotiations or this court order,
5 will affect in a dramatic way, what the
6 proceeds from a sale of the non-core
7 businesses will be, correct?

8 A. Correct.

9 Q. And another significant element of
10 the value of those businesses and the proceeds

11 to be received from its sale will be the
12 viability of executory contracts with General
13 Motors and the pricing mechanism under those
14 contracts, correct?

15 A. Yes. But principally the pricing
16 because General Motors is generally the
17 largest or the only customer for many of the
18 non-core businesses.

19 Q. Now, has Delphi or Rothschild
20 prepared any projection of the range of
21 proceeds that might be received from such
22 sales, projections, worst-case, best-case,
23 likely-case of what the sale proceeds of the
24 non-core facilities would be?

25 A. No, it has not.

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1 Q. Can you give us order of magnitude
2 range? Are we talking about tens of millions
3 of dollars, hundreds of millions of dollars?

4 A. The approach that we've taken is
5 because the two key variables, in terms of
6 what the labor structure would be and the GM
7 pricing would be, would be a significant
8 component of the sale proceeds so we've gone
9 forth on the businesses that we're planning to
10 sell and putting together a set of
11 projections. They have not been completed

12 yet, but the thought processes we explained to
13 the creditors' committee meeting, on the basis
14 of the company's current labor proposals,
15 competitive benchmark and GM consensual, in
16 developing a sense of what GM pricing would be
17 to the extent the company was able to achieve
18 either of those two alternatives. That would
19 produce a set of cash flows and then that
20 would allow us to come up with some
21 preliminary views on value but we haven't
22 completed that yet.

23 Q. Again, without probing it too
24 deeply, but just to get a sense of an order of
25 magnitude, so assuming Delphi achieves, one

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1 way or another, the labor costs it's pursuing.
2 And assume it receives, one way or another,
3 from General Motors, the business relationship
4 it's pursuing, what do you anticipate, order
5 of magnitude, the range of the proceeds from
6 those sales would be.

7 A. I'm sorry. We just -- we did not
8 look --

9 Q. Again, not even in the sense of tens
10 of millions as opposed to hundreds of millions
11 of dollars?

12 A. The businesses that we're looking at
13 vary in size. There -- the steering
14 businesses, one of those non-core businesses.
15 That's a much larger -- I'm sorry.

16 Q. The steering business?

17 A. The steering business. It's roughly
18 --

19 Q. Almost like hearing businesses.

20 A. -- roughly two billion in sales, a
21 little bit more. There are some that are
22 smaller, instrument panels and cockpits which
23 are 400 some million in sales. And then there
24 are some that we're not involved in because
25 they're very small, the company's handling

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1 internally, like brake hoses and a business
2 called Mobilary. So --

3 Q. Well, let's take steering. Let's
4 just take -- is steering the largest of the
5 non-core businesses?

6 A. Steering --

7 Q. So you've got a two billion dollar
8 volume business, we've got in place the wage
9 rates that Delphi seeks. You've got the GM
10 commercial arrangements that GM seeks. What's
11 the multiple you'd apply to that volume
12 figure?

13 A. The problem that we have right now,
14 and I'd like to try to give you an answer on
15 this, is that those businesses are losing
16 money today because of the current wage and
17 benefits structure and the GM pricing
18 structure that currently exists. That's why
19 we moved to reject many of the contracts with
20 GM. So, until we can do that pro forma
21 analysis and produce a positive EBIDA that we
22 can use to value, it's hard to apply a
23 multiple to it. My point is that it's a large
24 business. There will be, we expect, some
25 value for that business, but right now it's a

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1 negative EBIDA business.

2 Q. Well, but it's a negative EBIDA
3 business. That presumably is why you are
4 seeking to shed it, but you're also seeking to
5 shed it in the context of achieving major
6 changes in the cost structure of that post-
7 sale business. We could obviously make it a
8 more attractive business proposition from your
9 analysis then it is today, correct?

10 A. Yes. But one other point -- that
11 Delphi's also seeking to shed it because it's
12 non-core to the product line it would like to

13 focus -- Delphi would like to focus on, going
14 forward.

15 Q. But none of your projections to date
16 then, take into account any level of proceeds
17 from the sales of these non-core businesses?

18 A. Correct. We say any proceeds would
19 be used to reduce the cost of transformation.

20 Q. Now you'll accept, I take it,
21 Delphi's conclusion that it needs to find a
22 pension solution, even if it achieves its
23 competitive proposal?

24 A. Yes.

25 Q. And I take it you would agree with

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1 Mr. Sheehan's conclusion that Delphi would not
2 have the cash to make the required pension
3 contributions in '07 and '08 and in its
4 cumulative obligations from '07 to 2010, would
5 exhaust all Delphi's available cash?

6 A. If it did not find a solution,
7 correct.

8 Q. Assuming no change in existing law
9 and regulations, are you aware of any source
10 of funds for Delphi to meet its required
11 pension obligations from '07 to 2010?

12 A. I believe we said that to address
13 the pension issue in the competitive benchmark

14 scenario, we would need to negotiate with the
15 PBGC, whether it's a waiver or some change
16 that would give us the flexibility to stretch
17 out those payments so we could be able to
18 service the pension obligations.

19 Q. And my question was whether,
20 assuming no change in existing law and
21 regulations and assuming that Pension Benefit
22 Guaranty, Pension Benefit Corporation doesn't
23 give you what you're seeking, are you aware of
24 any other source of funds for Delphi to meet
25 its required pension obligations?

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1 A. Delphi could consider, depending on
2 the result achieved, finding an outside party
3 to provide financing, to help them meet those
4 obligations.

5 Q. Are you aware of any such source?

6 A. Not at this time.

7 Q. Is it not your opinion that there is
8 no such source?

9 A. It depends on the ultimate
10 transformation achieved and how someone -- if
11 Delphi's able to develop cash flow in the
12 future, significant to repay a loan that
13 someone might make them so it could pay the

14 pension funding requirement when they emerge,
15 that could be a possibility.

16 Q. Has Delphi pursued with the PBGC,
17 the waivers that it needs?

18 A. Delphi has begun to have preliminary
19 discussions with the PBGC.

20 Q. Has it received PBGC's approval?

21 A. Not at this time.

22 Q. Has Delphi or have you explored
23 alternate sources of financing under the
24 conditions you described in your penultimate
25 answer?

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1 A. Other than identifying that as a
2 possibility, we have not gone out and explored
3 that.

4 Q. And is it not your professional
5 belief that such funding sources do not exist?
6 This is Rothschild I'm asking, not Delphi.

7 A. I think if Delphi is able to achieve
8 the competitive benchmark transformation that
9 we set forth, I think it would be possible
10 that there could be investors who would
11 consider looking at making some form of
12 investment to help Delphi make the pension
13 payments.

14 Q. There might be someone who would

15 consider looking. Is there anyone, in your
16 professional judgment that would lend money
17 for the proposition of making those pension
18 contributions?

19 A. I think if Delphi is able to do what
20 it tries to achieve in a competitive benchmark
21 projection, which is to bring its costs, its
22 labor and benefit costs, its overhead SGNA
23 costs in line with the market, so it can be a
24 viable business going forward. And the one
25 remaining piece of its reorganization plan is

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1 how to fund the pension obligations that are
2 due upon emergence.

3 There may be an investor that would look
4 at Delphi's business plan now that it's a
5 competitive, viable business. It has focused
6 on the core businesses going forward that it
7 believes can grow that might be willing to
8 work with them on helping them meet those
9 obligations.

10 Q. What is the amount of those -- I'm
11 sorry.

12 A. I don't think that's unrealistic.

13 Q. What is the amount of those
14 obligations, the pension obligations?

15 A. My recollection is roughly two
16 billion dollars around the time of emergence.
17 It's the under funded amounts that it has not
18 been paying since it filed for Chapter 11.

19 Q. And you believe that there's someone
20 out there who's going to lend two billion
21 dollars to Delphi to pay its pension
22 obligations?

23 A. Well, it may be --

24 Q. You'll let us know as soon as you
25 find somebody?

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1 A. It may be an equity investment. And
2 they may take equity.

3 Q. Appaloosa. Where's Appaloosa? You
4 guys ready? Mr. Resnick, I would hope that
5 your desire to maintain credibility with this
6 court is as strong as your desire to maintain
7 credibility with the JP Morgans and Chases of
8 the world. And you may want to reconsider
9 your answer to that.

10 MR. BUTLER: Objection, Your Honor.
11 Move to strike the comment.

12 MR. SIMON: Withdrawn.

13 THE COURT: You know he's a lawyer
14 too. He's a lawyer too.

15 MR. SIMON: I know.

16 THE COURT: The point is I don't
17 think really works. The point is I don't that
18 type of stuff really works.

19 BY MR. SIMON:

20 Q. Has Delphi or Rothschild performed a
21 risk analysis of the possibility of a UAW
22 strike if the court grants the rejection
23 motion?

24 A. Rothschild has not performed an
25 analysis.

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1 Q. Are you aware of whether or not
2 Delphi has?

3 A. I know Delphi has had some
4 discussions internally about the risks of a
5 strike.

6 Q. And have you discussed that
7 possibility with those in Delphi who've been
8 discussing that possibility?

9 A. I've participated in meetings when
10 that subject has been discussed, yes.

11 Q. And would you tell us what the
12 assessment is of the impact on Delphi if UAW
13 were to strike?

14 A. The impact would be very significant
15 to Delphi.

16 Q. Can you help us understand what the
17 phrase very significant means in that answer?

18 A. Well, if the UAW would strike,
19 Delphi would not be able to supply parts to
20 its customers and Delphi would not be able to
21 get paid as it would so it would begin to lose
22 even more money than it's currently losing
23 operating under the existing wage and benefit
24 structure.

25 Q. Would Delphi be able to reorganize

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1 in the event of a strike?

2 A. I think it would be very difficult.

3 Q. Does Delphi have a plan to try to
4 operate the struck plants with scabs in the
5 event of a strike?

6 A. I'm not aware if it does.

7 Q. And did -- were you party to any
8 discussions in which that was discussed?

9 MR. BUTLER: Objection. Asked and
10 answered. You asked him whether --

11 THE COURT: Well, when you say
12 you're not aware --

13 THE WITNESS: I was not part of any
14 discussions where that subject arose.

15 MR. SIMON: No further questions.

16 THE COURT: Okay.

17 UNIDENTIFIED SPEAKER: My questions
18 have been answered, Your Honor.

19 THE COURT: All right. Anyone else?
20 Mr. Resnick, I think you said, when you were -
21 - and I don't mean to cut you off, Ma'am. You
22 can go ahead after I ask this question -- but
23 that to the extent there are sale proceeds
24 from the non-core assets, they haven't been
25 taken into account in the projections upon

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1 which the proposals are based, correct?

2 THE WITNESS: Correct. Because we
3 hadn't done the analysis that I was describing
4 to Mr. Simon.

5 THE COURT: But then, I think I
6 heard you say that the intention would be that
7 they would be used, to the extent they're
8 generated, to reduce the cost of
9 transformation?

10 THE WITNESS: Correct. That's
11 right.

12 THE COURT: Can you elaborate on
13 that?

14 THE WITNESS: Yes, Your Honor. That
15 of the non-core businesses, some of those
16 businesses could be sold but some Delphi

17 believes are not saleable because you just
18 can't produce those products in the United
19 States anymore on a cost-effective basis,
20 products, spark plugs or wheel bearings, GM is
21 the principal customer.

22 They have informed Delphi that they
23 can source those products, for significantly
24 less money, outside the United States. So
25 since they're the principal customer, they

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1 won't buy from Delphi, you can't sell the
2 business because there wouldn't be a contract
3 for it. So we have to wind down the facility.
4 That's costly. That takes some time. So the
5 thinking in our plan was that any sale
6 proceeds would go to help pay for those wind-
7 down costs.

8 THE COURT: Okay. Thank you.

9 BY MS. ROBBINS:

10 Q. Good afternoon, Mr. Resnick.
11 Marianne Robbins. Is there any relationship
12 between scenario C in your declaration and the
13 consensual proposals that were submitted n
14 March?

15 A. Not directly. There -- it was
16 probably the genesis -- scenario C was the
17 genesis of the consensual proposals because

18 when we were retained one of our primary
19 objectives, at the direction of Delphi, was to
20 work with them to try to achieve some form of
21 out-of-court resolution of these issues and
22 scenario C was the basis of that. And that
23 ultimately was evolved into some of the other
24 scenarios.

25 Q. What does OPEB stand for?

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1 A. Other Post Employment Benefits.

2 Q. And that would include health
3 insurance and life insurance?

4 A. Yes, Ma'am.

5 Q. And under scenario C, there would be
6 OPEB that would continue, is that right?
7 There'd be health and life -- retiree health
8 and life benefits that would continue but in a
9 modified form?

10 A. In a modified form.

11 Q. Do you recall what that was?

12 A. I don't recall.

13 Q. Do you have your declaration, your
14 initial declaration, Exhibit 18, in front of
15 you?

16 A. Yes.

17 Q. In paragraph 26, you mention

18 pursuing scenario C with unions. Do you have
19 any direct knowledge of unions, other than the
20 UAW, that were involved in those discussions?

21 A. I don't have any direct knowledge.

22 Q. So you have no direct knowledge as
23 to the IBEW or IAM being involved in that?

24 A. My recollection is that the Delphi
25 labor group may have shared scenario C with

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1 some of the other unions but --

2 Q. But you don't know about it?

3 A. No, Ma'am.

4 Q. And in paragraph 24, you also
5 reference GM in the unions and would it also
6 be true that in that respect you have no
7 direct knowledge of any involvement by the IAM
8 or the IBEW?

9 A. That's correct.

10 Q. And the same with respect to the
11 discussions you referred to in January of
12 2006. You have no knowledge of any
13 involvement of the IAM or IBEW in those
14 discussions, is that right?

15 A. That's correct.

16 MS. ROBBINS: No further questions,
17 Your Honor.

18 MS. MEHLSACK: Your Honor.

19 BY MS. MEHLSACK:

20 Q. Good afternoon, Mr. Resnick.

21 Barbara Mehlsack, attorney for the Operating
22 Engineers. I can make this quick. If I asked
23 you the same questions that you were asked by
24 Ms. Robbins. Do you have any knowledge of the
25 involvement of the Operating Engineers Locals

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1 in the meetings that are listed in your
2 declarations? I assume you would answer the
3 same way, that you have no such knowledge.

4 A. Yes, that's correct.

5 MS. MEHLSACK: No further questions,
6 Your Honor.

7 THE COURT: Okay. Any redirect?
8 Okay.

9 REDIRECT EXAMINATION BY
10 MR. BUTLER:

11 Q. Mr. Resnick, Mr. Simon asked you
12 about the pre-petition financing that was
13 completed in the base case projections. Do
14 you recall those questions?

15 A. Yeah.

16 Q. Do you recall, Mr. Resnick, when
17 that loan was closed?

18 A. My recollection was June of '05. It

19 was shortly after Rothschild was retained.

20 Q. Do you have a recollection of
21 whether the downside case that you testified
22 to was completed before or after the financing
23 was completed?

24 A. After.

25 UNIDENTIFIED SPEAKER: Before or

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1 after?

2 BY MR. BUTLER

3 Q. Before or after the financing was
4 completed?

5 A. After.

6 Q. And did you participate, in any way,
7 in connection with the closing of that
8 financing?

9 A. No, I did not.

10 Q. In your own words, Mr. Resnick,
11 would you please tell the Court why you
12 recommended that the downside case be
13 developed in June of 2005?

14 A. Yes. When Delphi retained us, the
15 first task they asked us to focus on was to
16 work with them in developing several strategic
17 alternatives for its business. When Delphi
18 retained Rothschild, management had begun to
19 focus and indeed had focused on looking at its

20 business to understand how it was going to
21 address the continued deterioration in its
22 operating profitability resulting from the
23 significant loss of GM market share that was
24 its largest customer. Although GM -- although
25 Delphi had successfully replaced GM business

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1 with other customers, GM was still roughly 50
2 percent of its business, declining content in
3 GM vehicles, so Delphi's profitability was
4 suffering because of GM market share losses.
5 Delphi was also under pressure from its
6 existing wage and benefit agreements with its
7 unions which had its wage and benefit costs
8 significantly higher, dramatically higher than
9 other automotive part suppliers, which it had
10 to compete with every day in the market for
11 new business. And at the same time, it was
12 experiencing dramatic increases in material
13 prices.

14 So Rothschild was asked to work with
15 Delphi to look at a spectrum of alternatives
16 of how Delphi could address that problem
17 before it found itself in a position of being
18 forced to file for Chapter 11 or running
19 out of cash, to do this in a thoughtful way

20 without its back against the wall.

21 We looked at the base case projections
22 and our view was because the company was not
23 performing in line with the base case and in
24 deference to Mr. Simon, because those
25 projections were probably not attainable, that

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1 it would be prudent for the company to develop
2 another set of projections for us to use for
3 our analysis. And we worked with the
4 financial staff to develop what became known
5 as the downside case and that's what we used
6 when we came up with scenarios A,B,C and D.

7 Q. Speaking of scenarios A,B,C, and D,
8 did Rothschild ever make a recommendation to
9 the Board of Directors of Delphi about which
10 scenario the board might consider pursuing?

11 A. Yes.

12 Q. What scenario did you recommend?

13 A. We recommended scenario C.

14 Q. In your own words, can you please
15 tell the Court why you recommended scenario C?

16 A. Yes. Because we believed that
17 Delphi could work with its two major
18 stakeholders, GM and the unions, principally
19 the UAW but the IUE and the other unions, on a
20 plan that on an out-of-court basis could

21 address the three major challenges that Delphi
22 faced, that I just mentioned. And that it
23 would be better for the company, and we felt
24 for all the stakeholders, to do that outside
25 of a Chapter 11 proceeding and avoid having to

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1 use the process that we're going through
2 today, the 1113 process, which is a very
3 difficult process on many fronts.

4 So our view was that we should develop a
5 proposal, which was scenario C, present that
6 to both GM and the UAW, which was done in the,
7 I believe, June/July timeframe, and worked
8 very hard by trying to develop an out-of-court
9 solution.

10 Q. Can you briefly describe to the
11 Court the other three scenarios and why you
12 did not recommend those?

13 A. Yes. Scenario D, as I discussed
14 earlier, was essentially a business-as-usual
15 scenario and I think we and, particularly the
16 Delphi management team, recognized that
17 scenario D was not working. That's why they
18 retained us to help them look at other
19 alternatives. The company was losing
20 considerable money at the time.

21 Scenario A, at the other end of the
22 spectrum, was the Chapter 11 filing and use of
23 1113 and scenario B was in between scenario A
24 and C.

25 Q. And briefly, why did you not

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1 recommend any of those scenarios?

2 A. Because we felt that the company
3 should work hard on developing a consensual
4 out-of-court solution before having to bring
5 an 1113 motion, before having to consider
6 alternatives -- for example, scenario A went
7 so far, it's kind of the extreme Chapter 11
8 case, termination of pensions, termination of
9 OPEB. It was a fairly drastic response to the
10 company's financial problems and we felt
11 consensual negotiations among the parties with
12 equal sacrifice among them would be a better
13 way to try to achieve a result.

14 Q. Mr. Resnick, Mr. Kennedy and Mr.
15 Simon asked you about various of the other
16 scenarios, the steady state scenario, the
17 competitive benchmark scenario, and the GM
18 consensual scenario. Do you recall that --
19 those questions in your testimony?

20 A. Yes.

21 Q. Will you please tell the Court, in

22 your own words, the chronology of those
23 scenarios? Which was developed first and
24 distributed? Second? Third? The relationship
25 between those scenarios over the last nine

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1 months?

2 A. Yes. The business planning approach
3 the company took was what I'd consider a
4 fairly logical, methodical one. It started
5 with the steady state, which was business-as-
6 usual and that was the initial building block.
7 And then overlaid on that was the
8 transformation alternative that would allow
9 Delphi to become competitive.

10 So what the company did, was it looked at
11 the competitive elements on labor and it went
12 out and through, you know, Mr. Butler's
13 office, developed competitive benchmarking for
14 wages and benefits for labor. It went out
15 through Mr. Sheehan and me, the CFO, Mr.
16 Dellinger, and looked at overhead
17 benchmarking, SGNA, of what would be
18 appropriate. It looked at its pricing for its
19 customers.

20 And that was the basis of what we called
21 the competitive benchmarking proposal. It

22 assumed that we had no support from General
23 Motors. It would be a result that the company
24 would achieve on its own to become a
25 competitive, viable business.

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1 It also looked at the products that it
2 produced, what we refer to as the core and
3 non-core business. And the operating
4 management looked at the businesses that it
5 felt Delphi had critical mass and market
6 position and most importantly, technology,
7 which is critical for a successful automotive
8 supplier today to be competitive in the
9 future.

10 And those were the businesses around
11 which Delphi decided to reorganize. And the
12 other businesses were the non-core businesses.
13 And that was the basis of the competitive
14 benchmarking proposal that evolved after the
15 steady state. It was what we called the first
16 overlay onto the steady state projections.

17 From that point, and particularly driven
18 as I mentioned I believe with Mr. Simon, by
19 the discussions that we had with General
20 Motors around the Thanksgiving period when
21 General Motors offered some support for Delphi
22 and we were able to engage General Motors in

23 our discussions, we developed a framework
24 where GM participation could improve the
25 competitive benchmark proposal, that would

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1 essentially provide the soft landings that
2 Delphi felt would be very important for a
3 consensual restructuring proposal,
4 particularly the buy-downs. Here were some of
5 the differences between the competitive and
6 the consensual. Employee buy-downs, roughly
7 50,000 dollars. A revenue plan from GM that
8 would provide additional pricing on certain
9 products to provide Delphi with additional
10 cash to help wind down its businesses and some
11 of the payments that we considered would be
12 the difference between the competitive
13 benchmark wages and 60 dollars in the GM
14 consensual proposal. That was significant,
15 several billion dollars from General Motors
16 and that was the basis of the GM consensual
17 plan.

18 Q. Thank you. Mr. Simon asked you a
19 series of questions about the first quarter
20 performance of 2006. Do you recall those
21 questions and your answers?

22 A. Yes.

23 Q. Mr. Resnick, I'd like you to turn to
24 Exhibit 96A, which is in the confidential
25 book.

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1 A. Okay.

2 Q. Ready?

3 A. Yeah.

4 Q. Mr. Resnick, again keeping in mind
5 that this is confidential information, will
6 you generally describe to the Court what
7 Exhibit 96A represents?

8 A. Yes. This is a portion, several
9 pages, from a presentation Delphi made at the
10 May 3, 2006 meeting of the official committee
11 of unsecured creditors.

12 MR. SIMON: Your Honor, just so that
13 we don't waive any rights, we have not
14 acknowledged and do not intend to acknowledge
15 that exhibits marked confidential by the
16 debtor should necessarily retain that quality.
17 So Mr. Butler's description of it, I take it,
18 will not foreclose us, at an appropriate time,
19 from making an appropriate objection if
20 necessary.

21 MR. BUTLER: I'm not sure what the
22 appropriate objection part was. It is a
23 confidential document, protected by the

24 protective order. It's contemplated under
25 Section 1113. As I said at the outset of

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1 these cases -- of this hearing, I'd expect all
2 the parties to use their best efforts to
3 maintain the confidentiality. If the debtors
4 feel we need to move for a closed term, we
5 will.

6 THE COURT: Well, the protected --

7 MR. SIMON: I was simply retaining
8 rights. I wasn't making the objection now,
9 but I didn't want it to be waived based upon
10 Mr. Butler's un-responded --

11 THE COURT: All right. But as I
12 remember the protective order, the burden is
13 on the party challenging confidentiality to
14 raise it, so you were reserving the right to
15 raise that at some appropriate point.

16 MR. SIMON: Yes. Thank you, Judge.

17 THE COURT: Okay.

18 BY MR. BUTLER:

19 Q. Again, Mr. Resnick, can you -- as a
20 general matter, can you describe what this
21 presentation was to the creditors' committee?

22 A. Yes. This presentation, or the
23 pages that excerpted in Exhibit 96A, is an

24 explanation of the first quarter performance
25 of the company versus the steady state

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1 projections. It's what the company calls its
2 three plus nine forecast. It's three plus
3 nine because it now contains three actual
4 months of performance and then nine months of
5 projected.

6 It's very typical with the way Delphi
7 operates. Each quarter it reviews its
8 performance versus projections and it has
9 actual for the remaining projected period.
10 Actual -- sorry, I'll get a little closer.
11 Actual and the remaining projected period.

12 Q. Was this presentation made to the
13 Board of Directors at Delphi?

14 A. Yes, it was.

15 Q. Do you recall on what date it was
16 presented to the board?

17 A. I believe it was presented just a
18 few days before it was presented to the
19 creditors' committee meeting, the very end of
20 April.

21 Q. Can you just, as a general matter,
22 walk the Court through each of the pages of
23 these presentations, and make, as a financial
24 advisor to the debtor, whatever basic points

25 you believe are appropriate with respect to

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1 the three plus nine update.

2 MR. SIMON: Your Honor, with all due
3 respect, it seems to me this is the time in
4 which it might be appropriate to make a
5 comment. We do not believe that in this
6 proceeding, the debtor ought to be able to
7 shield information without the kind of
8 extraordinary showing required both by Supreme
9 Court Second Circuit and the rules as to its
10 necessary confidential basis.

11 This case consists, to a large
12 extent, of historical data which Delphi puts
13 forward showing that the sky is falling, but
14 when it can be pointed out that sky is not
15 necessarily pointing (sic), will claim that
16 the information that establishes it's not
17 falling, is confidential.

18 And while the Court may be capable
19 of taking the material for what it's worth and
20 reading the confidential exhibits, this is a
21 public proceeding. It is a essentially
22 related collective bargaining matter.
23 Thousands, tens of thousands of workers are
24 going to be looking to this proceeding and its

25 outcome and it doesn't seem to us that

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1 critical material, unless it can be
2 established to be fully within the narrow
3 exception to a public proceeding, should be
4 able to be relied upon.

5 MR. BUTLER: Your Honor, I believe
6 the statute of the section 1113 provides --
7 1113(d)(3), for the entry of protective
8 orders. This Court has entered protective
9 orders and the question really is whether or
10 not the Court, at Mr. Simon's urging now, is
11 going to abrogate those protective orders.

12 THE COURT: Well, I -- the ultimate
13 issue I guess, under 1113(e) is -- since I
14 think this is broader even than 107, is
15 whether this information, contained in this
16 exhibit -- I'm sorry, not (e), (d)(3), the
17 disclosure of this information would
18 "compromise" the position of the debtor with
19 respect to its competitors in the industry and
20 it's hard for me to discern that from looking
21 at these documents which contain financial
22 information, but it's all fairly generic.

23 MR. BUTLER: Well, Your Honor,
24 actually on page 36, it describes a breakdown
25 of operating income impact both actual and

1 projected over 2006 which is not available in
2 any public arena.

3 It provides information on pages 37
4 with regard to adjustments and assumptions on
5 both its steady state operating income and
6 cash flow.

7 On page 38, it discusses its
8 benchmark, the competitive benchmark and the
9 GM consensual scenarios. On page 39, it talks
10 about the attrition program and estimates
11 costs of that program.

12 And then there are some conclusions
13 on page 40 that I wanted to ask Mr. Resnick
14 about. This information, I would argue,
15 particularly, in the future information, would
16 be of interest to Delphi's competitors and I
17 don't know, I'm not quite sure what Mr.
18 Simon's motivation here is because the only
19 try or fact on this is Your Honor and you have
20 all of the relevant information.

21 MR. SIMON: With due respect, Your
22 Honor, my motivation aside, the company's
23 motivation is to shield from the public what
24 the public and the workers affected by this
25 extension of the collective bargaining process

1 are entitled to know. This isn't a little
2 game between the two of us in which you are an
3 umpire in a sealed room. This is a court of
4 the United States.

5 THE COURT: No, but the issue is
6 whether this puts the company at a competitive
7 disadvantage if disclosed, which I'm sure the
8 workers wouldn't want to have either.

9 MR. SIMON: No. The question's
10 whether it compromises the position of the
11 debtor with respect to its competitors.

12 THE COURT: Right.

13 MR. SIMON: That's the statutory
14 phrase.

15 THE COURT: Right. And Mr. Butler's
16 saying that the competitor, not only sees
17 what's in the papers publicly, which is the
18 debtor's losing X billion dollars projected
19 over a period, but sees the specific numbers
20 for specific years.

21 MR. BUTLER: And specific categories
22 --

23 THE COURT: And specific categories.
24 It gives them a leg up in their negotiations
25 with customers and with other parties. That's

1 his argument.

2 MR. SIMON: With due respect, Your
3 Honor, Mr. Butler said the competitors would
4 be interested in it. I suspect competitors
5 might be interested in it. That's not the
6 issue. The issue is whether Delphi's position
7 would be compromised with its competitors.
8 That requires a showing. The showing hasn't
9 been made and we think there is a very strong
10 presumption. Supreme Court Second Circuit
11 rules this Court that matters be public and
12 not conducted in Star Chamber proceedings.

13 MR. BUTLER: Your Honor, my only
14 response to Mr. Simon's comments and I -- Mr.
15 Simon is known for his hyperbole, but to
16 suggest that this is a Star Chamber, I think
17 is a little over the top. You know, this is a
18 question about whether detailed financial
19 information and projections that have not been
20 made public by the company should be made
21 public in an effort, in a redirect examination
22 of questions that Mr. Simon asked on a cross-
23 examination.

24 THE COURT: Well, can I -- can you
25 get at this a little more directly, which is

1 what is the basis for the 500 million or
2 whatever the actual variance is?

3 MR. BUTLER: Well, what I was trying
4 to get to -- to demonstrate to Your Honor, and
5 part of the reason we're using this exhibit --
6 this is a creditors' committee exhibit. Mr.
7 Simon's client is on the creditors' committee.
8 Mr. Kennedy's client is on the creditors'
9 committee.

10 They've received all the
11 presentations that were included in tab 96.
12 There are several of them here. Mr. Simon
13 raised a whole bunch of questions on cross-
14 examination about the various models and about
15 what assessments were made regarding those
16 models and what Rothschild's participation in
17 the assessment of those models were made. And
18 the answers to those questions lie in these
19 five pages, pages that were transparently made
20 available to our co-fiduciary. By the way,
21 the same pages were made available to the
22 equity committee at a meeting on May 3rd,
23 prior to Free Frank having been retained, when
24 they were represented by counsel to the
25 institutional investors of that committee. So

1 that both of our statutory committees had the
2 same information the Board of Directors had on
3 May 1st. And I -- we thought, Your Honor,
4 that it's useful in terms of redirect
5 examination, to provide the facts to the Court
6 and the prism that we thought it made sense to
7 look through was the actual presentations made
8 to the statutory committees of which the two
9 largest unions are members.

10 MR. SIMON: If I may, Your Honor?

11 UNIDENTIFIED SPEAKER: I'd like to
12 be heard as well, Your Honor.

13 MR. SIMON: So what we're being told
14 is that the Board of Directors can see this,
15 the creditors' committee can see it, the
16 equity committee can see it, the Court can see
17 it, but the public can't.

18 THE COURT: Well, right. Well let
19 me finish there. That is true because those
20 parties are all different. I hope as someone
21 who is on the creditors' committee, your
22 client understands that.

23 MR. SIMON: There are unions here
24 who are not on the creditors' committee who
25 haven't seen it. And you know when it was

1 presented, Your Honor? May 3rd.

2 THE COURT: Actually, has this been
3 provided to the other objectors?

4 MR. BUTLER: Yes. They have it in
5 their exhibit books, I believe. And they had
6 to sign the same protective orders. They have
7 it in their exhibit books.

8 MR. SIMON: And when did they get it
9 in their exhibit books? Friday?

10 MR. BUTLER: When we had our meeting
11 confirmed, Mr. Simon and put it all the
12 together. I don't know what your game is in
13 this.

14 MR. SIMON: You're calling it a
15 game. This is the lives of tens of thousands
16 of people. They don't --

17 THE COURT: No. No. Listen, Mr.
18 Simon. Mr. Simon, with all due respect, I
19 also have some question as to what is going on
20 here with your objection. It cannot be one
21 based on your inability to evaluate this
22 information 'cause your client has had it.

23 MR. SIMON: That is correct. It is
24 not.

25 THE COURT: So, you simply want to

1 make it public.

2 MR. SIMON: I simply want to make it
3 public. Your Honor, this proceeding will
4 affect tens of thousands of people. This is a
5 court of the United States. When you affect
6 the interests of tens of thousands of people,
7 I would suggest to you that the institution of
8 this Court and the credibility of this
9 institution is aided --

10 THE COURT: All right. Yes. Yes,
11 and apple pie and motherhood had a good too,
12 and you know what else is good too, making
13 sure that this business doesn't need more
14 money because one of its competitors takes
15 money away from it. And I don't really hear
16 you addressing that issue. I hear more of a
17 rhetorical point. I'm trying to figure out
18 what your real issue is.

19 MR. SIMON: My single -- well here's
20 the real -- among the real issues is the fact
21 that -- perhaps the objection I should have
22 raised was that this was beyond the scope of
23 direct --

24 THE COURT: Well, yes. That's what
25 I was trying to get in Mr. Butler. Is there

1 some easy way to deal with --

2 MR. SIMON: Well, I would object on
3 the grounds that this is beyond the scope of
4 direct.

5 MR. BUTLER: It's not beyond the
6 scope of cross-examination because you asked
7 him about the --.

8 MR. SIMON: It's beyond the scope of
9 cross, I'm sorry. Beyond the scope of cross.

10 THE COURT: Beyond the scope of
11 cross for redirect. I don't know what you're
12 offering this for. If you're offering it, you
13 know, to ask him how the company does its
14 financial projections and how it measures them
15 and why the projections were off, isn't there
16 some other way you can do that without
17 addressing these actual numbers?

18 MR. BUTLER: Your Honor, the --

19 THE COURT: Particularly for the
20 years 2007 through 2010, which I think is the
21 main area that you were concerned about, as
22 opposed to actual.

23 MR. BUTLER: Let me make a proper
24 rest of where I was trying to go and then --

25 THE COURT: Okay.

1 MR. BUTLER: Mr. Simon, in his cross
2 examination, said to Mr. Resnick -- in
3 connection with a 2005 base case and then a
4 downside base case -- said, Mr. Resnick, when
5 you found out that the company was not
6 performing according to base case, you
7 recommended a downside base case, correct?
8 Correct. Then he jumped ahead and talked
9 about the steady state. All right? And then
10 he talked about the fact that we'd done better
11 in the steady state and asked what changes
12 were being made within the steady state as a
13 result of that and what Rothschild had
14 recommended along those lines. That was the
15 line of his questioning.

16 MR. SIMON: Close, but no cigar.
17 But close.

18 THE COURT: Right. That's close.

19 MR. BUTLER: Close enough for
20 redirect. I think for redirect, I'm trying to
21 make sure Your Honor understood that and what
22 I believe -- I proffer I believe the witness
23 would testify to, is that as I go through this
24 -- and Mr. Simon knows this because he's seen
25 these pages, sat in the meetings when Mr.

1 Resnick was in the meetings and helped make

2 these presentations. The fact is the company
3 went through and took three plus nine
4 information, applied it against the steady
5 state, made some adjustments to the steady
6 state which are reflected on page 37, compared
7 what the adjustments would be to the
8 consensual and GM and the benchmark scenarios
9 on page 38 and reached a conclusion, reported
10 on page 40, that says that the first quarter,
11 the company's view and I believe Mr. Resnick's
12 view is that these changes, that was the
13 subject of this cross examination, these
14 changes have no material impact on the models
15 that were presented to the unions. That was
16 the purpose of trying to present and it seemed
17 to me the most --

18 THE COURT: The first quarter
19 changes?

20 MR. BUTLER: The first quarter
21 changes, which is the subject of the cross
22 examination and it seemed to me these five
23 pages were extremely relevant to that. That's
24 why I tried to use them because it seemed to
25 me the best affectation of that issue.

1 MR. SIMON: You know, I don't

2 dispute that it's relevant. The question is
3 whether it's within the scope of cross in the
4 first place and B, if it's relevant whether it
5 should be secret. I don't dispute its
6 relevance.

7 THE COURT: Well, you did ask --

8 MR. SIMON: I dispute its accuracy.

9 THE COURT: You did --

10 MR. SIMON: I dispute its wisdom.

11 THE COURT: You did make a point
12 about the company being off on their
13 projections and --

14 MR. BUTLER: I can ask him. Your
15 Honor, this is an exhibit. I can ask him two
16 questions about the last page, without going
17 through every page if that will make it
18 easier.

19 THE COURT: All right. Why don't
20 you try that?

21 MR. BUTLER: Okay.

22 BY MR. BUTLER:

23 Q. Mr. Resnick, did you participate in
24 the meeting when these pages were presented to
25 the creditors' committee?

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1 A. Yes, I did.

2 Q. Did you also -- did you form an

3 opinion as to whether or not the three point
4 -- the three plus nine projections required
5 any material updates to either the GM
6 consensual scenario or the GM -- or excuse me
7 or the benchmark, competitive benchmark
8 scenario?

9 A. Yes, I did.

10 Q. And what was your opinion?

11 A. My opinion was that the information
12 presented here with respect to the three plus
13 nine was not material and did not require the
14 company to change either the competitive
15 benchmark or the GM consensual, that most of
16 the performance was in the first quarter, the
17 company did not expect that to continue. But
18 more importantly, with respect to the
19 competitive benchmark and the GM consensual,
20 that many of the elements that drove the
21 significant differences, particularly in cash,
22 which is the key item, not operating income,
23 in cash, were elements that were reflected
24 already in the competitive benchmark and GM
25 consensual projections because they were

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1 principally labor related.

2 For example, the SGNA differential, which

3 was a very significant item in terms of the
4 cash differences, resulted from people leaving
5 voluntarily on their own because of the
6 company's Chapter 11 file. Well, in both the
7 competitive benchmark and the GM consensual,
8 there is an SGNA transformation; an overhead,
9 a salary overhead reduction and these amounts
10 were in compass in those two series of
11 projections. So it really wasn't material.

12 The same with the jobs bank amount that,
13 because of the transformation, the reduction
14 in the workforce, the left, the right side
15 changes, that we were already contemplating
16 that sort of transformation in our two
17 projections and this was higher than what we
18 were projecting for '06 but it was in compass
19 in the two scenarios.

20 Q. Were there material changes in the
21 steady state projections?

22 A. Yes, there were material changes
23 from the steady state.

24 Q. And in your words, will you explain
25 to the Court why there would be material

1 changes in the steady state scenario but not
2 in the benchmark competitive scenario and the
3 GM consensual scenarios that were the subject

4 of the proposals to the unions.

5 A. Because the steady state did not
6 contemplate a transformation of Delphi, of its
7 workforce, of its SGNA, of its pricing.

8 Q. So do --

9 A. It was business-as-usual. So these
10 improvements did have a significant impact.

11 Q. Is your testimony the timing of
12 these improvements was already comprehended in
13 these other scenarios?

14 A. Yes.

15 MR. BUTLER: No further questions.

16 MR. SIMON: May we have 60 seconds,
17 Your Honor?

18 THE COURT: Absolutely.

19 MR. SIMON: No further questions,
20 Your Honor.

21 THE COURT: All right. Let me just
22 -- I have a couple of questions, Mr. Resnick.
23 The presentation was made to the board
24 regarding the competitive benchmark proposal,
25 which I think you described as the first

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1 overlay on steady state projection.

2 THE WITNESS: Yes.

3 THE COURT: Were there any

4 distinctions made as between the benefits to
5 the operating U.S. companies and Delphi the
6 parent, as a result of that overlay, that
7 plan?

8 THE WITNESS: No. It was done on a
9 consolidated basis.

10 THE COURT: Is there any
11 consideration as -- has there been any
12 consideration by the debtors of whether the
13 parent is to benefit by the proposal that is
14 embodied in the competitive benchmark plan?

15 THE WITNESS: No, the company
16 doesn't look at it that way. It looks at its
17 projections consolidated and sometimes will
18 break out North America, where it has its most
19 significant challenges from the rest of the
20 world. But that's the way it does its
21 financial projections.

22 THE COURT: Okay. I'm going to your
23 discussion of scenario D, the business-as-
24 usual scenario and I know you did this fairly
25 early in your engagement. Does the analysis

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1 of scenario D change as the time grows nearer
2 to the date that the collective bargaining
3 agreements start to expire, i.e. does scenario
4 D become more attractive as that time

5 approaches?

6 THE WITNESS: The concern the
7 company had, back in June of '05 was whether
8 or not it would have significant liquidity,
9 whether it could continue to gain business
10 from customers if it did not make significant
11 changes to its business. So everyone knew
12 Delphi was losing significant amounts of
13 money, the problems it had with GM volumes and
14 if Delphi was going to refocus its business,
15 it had to focus on the core businesses to gain
16 new business from those areas. And customers
17 won't -- weren't going to give Delphi that
18 business if they didn't see that Delphi was
19 going to fix its problems.

20 So that was the conundrum that the
21 company faced. It was trying to deal with the
22 changed automotive market, a labor and
23 benefits structure that prohibited it from
24 competing in a very competitive industry.

25 You know, in this business, Your

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1 Honor, price -- Delphi competes for business
2 and sometimes they win business by pennies in
3 several hundred million dollars of chunks of
4 programs that go on for several years. And

5 it's very difficult for Delphi to compete for
6 that business which it may have to do today,
7 for a program that won't start for several
8 years, if it doesn't have a cost structure
9 that appears to the customer that's going to
10 be viable.

11 And the Delphi management felt that
12 prolonging this transformation, and it already
13 felt it was -- it had prolonged it too long
14 already, was going to be a significant
15 impediment to continuing its business and
16 that's why it felt business-as-usual wasn't
17 working. They were not winning some business
18 because of all the constraints they were
19 operating under, inability to close plants
20 that were losing money, for example.

21 THE COURT: In your mind, is there
22 any cut off point on that analysis? For
23 example, if you're six months away from the
24 expiration of the collective bargaining
25 agreements or two months, you know, is there

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1 some point where it doesn't really matter?

2 THE WITNESS: Sure. I mean if
3 you're just a couple months away, these
4 negotiations could be wrapped up at the time
5 you negotiate. But that's why we were pushed

6 very hard by the company to come out -- come
7 up with an out-of-court proposal, which we did
8 about a month and a half after we were
9 retained, and get that in front of GM and the
10 UAW.

11 THE COURT: Okay. Any other
12 questions you might add? All right, you can
13 step down, sir.

14 THE WITNESS: Thank you, Your Honor.

15 MR. BUTLER: YOUR HONOR, can we take
16 a short, just a short break?

17 THE COURT: Sure. Ten minutes.

18 THE COURT: Please be seated. Yeah.

19 I noticed some of you taking off your coats,
20 please feel free to do that. The TSA doesn't
21 believe its summertime until June 21st,
22 although we're trying to convince them
23 otherwise. No, no. You can leave them on.

24 MR. SIMON: Your Honor, if you can
25 wear a robe, I can wear a jacket.

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1 THE COURT: Well you don't see what
2 I have on underneath.

3 MR. SIMON: I'm not going to touch
4 that with a 10 foot pole.

5 THE COURT: Okay. Mr. Butler.

6 MR. BUTLER: Your Honor, continue
7 with the debtor's case in chief, I'd like to
8 call Kevin M. Butler for cross examination on
9 -- and move for the admission of his
10 declarations that are Exhibits 7 and 8 in the
11 trial book.

12 (The Admissions of Mr. Kevin Butler's
13 Declarations were hereby received as
14 Defendant's Exhibit 7 and 8 for
15 identification, as of this date.)

16 MR. BAUMSTEIN: Your Honor, Doug
17 Baumstein on behalf of the ad hoc equity
18 committee. Re-raising our application to
19 preclude the testimony of Mr. Butler. And I
20 would specifically note, for example, in his
21 supplemental affidavit, which I happen to have
22 in front of me. Para -- part -- section 3 is
23 entitled Delphi needs relief from its
24 collective bargaining agreement. Prior to
25 their September 2007 expiration. This was

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1 specifically an issue that the shareholders
2 identified as something worth examining. It
3 specifically goes to business judgment and the
4 issues that the Court is concerned with.
5 Accordingly, we think it's prejudicial for Mr.
6 Butler to testify on these subjects without

7 having given the shareholders an opportunity
8 to take a deposition.

9 THE COURT: Let me take a look at
10 the supplemental. All right. Again, this is
11 not a new issue. This was addressed in a
12 discovery conference about two weeks ago. And
13 again, based on my knowledge of what the
14 witnesses were being offered for in the
15 agreements worked out between the unions and
16 the company, they being the primary parties to
17 this litigation. It seemed to me that the
18 prejudice to the company and the unions of
19 permitting additional deposition discovery of
20 Mr. Butler, in light of his declaration, and
21 it was just a declaration, I think, at that
22 time, outweighed the benefits to Appaloosa.
23 I've looked at his supplemental declaration.
24 There is a one paragraph four -- four sentence
25 -- which consists of four sentences, as to why

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1 he believes that the debtors should not wait
2 until the expiration of the agreements. And
3 in respect to those four sentences, I don't
4 think he needs to -- again, I believe that the
5 prejudice to the primary parties to this
6 litigation outweighs the need to take a

7 deposition on these four sentences. Which I
8 think you can ask him about in cross
9 examination.

10 MR. BAUMSTEIN: Thank you, Your
11 Honor.

12 MR. KENNEDY: The union order of
13 cross examination, Your Honor, would be the
14 UAW, the IUE, and the steel workers. The 580W
15 and then the operating engineer.

16 THE COURT: All right.

17 (Witness is duly sworn.)

18 THE COURT: And again, well -- it's
19 B-U-T-L-E-R, right?

20 THE WITNESS: That's right, Your
21 Honor.

22 THE COURT: Okay. All right. Go
23 ahead Mr. Simon.

24 DIRECT EXAMINATION BY

25 MR. SIMON:

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1 Q. Still, good afternoon, Mr. Butler.

2 A. Good afternoon, counselor.

3 Q. As director of human resources, how large
4 a staff do you have?

5 A. Within the corporate staff, roughly about
6 90 people

7 Q. And when you refer to corporate staff, are

8 there other staff as well for which you are,
9 ultimately, responsible?

10 A. I have a dotted line relationship to the
11 HR staffs that are in the divisions.

12 Q. And how many are in those divisions
13 cumulative?

14 A. If we look at all aspects of HR in the
15 divisions, globally, it would be on the order
16 of about 2000 people.

17 Q. And the 90 to which you refer is that also
18 global, as opposed to U.S.?

19 A. No, that would be U.S. corporate staff.

20 Q. That's U.S. And if you were to restrict
21 the divisional folks to those involved with
22 U.S. operations out of the 2000, how many
23 would there be?

24 A. It would be a few hundred.

25 Q. Two hundred?

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1 A. No, a few hundred.

2 Q. Few hundred. And how is your staff
3 organized? By that I don't mean by the UAW, I
4 mean how is it structured?

5 A. It is -- it is structured in three main
6 arenas where we have the labor relations and
7 security function. We have benefits and

8 policy, and the benefits and policy benefits
9 covered both hourly and salary. The policy
10 function is salaried or white collar policy
11 principally. And then we have talent and
12 development and executive compensation. And
13 that is largely the corporate staff
14 organization.

15 Q. And in addition to the corporate and the
16 divisional levels, are there folks that report
17 to you, either directly or indirectly, in any
18 of the plants?

19 A. The plant personnel responsible for human
20 resources report up through the divisional
21 structure and then to me on a dotted line
22 basis.

23 Q. And order of magnitude, how many folks are
24 there out in the plants that would perform HR
25 functions?

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1 A. Could I clarify? Do you mean in the U.S.?

2 Q. Pardon? Yes, in the U.S.

3 A. In the U.S. the plant function would be --
4 let me see, best of my knowledge, several
5 hundred again.

6 Q. So, how many lawyers of management and
7 supervision, basically, are there between you
8 and a worker on the workroom floor?

9 A. Could you clarify the question? HR does
10 not directly supervise hourly employees. So,
11 I'm trying to understand the --
12 Q. Well then, let's just take it at the
13 corporate level, operationally, human
14 relations, however you will, between the
15 worker on the floor and the folks up in the
16 executive office, how many different layers of
17 management or supervision is there? I take
18 it; the workroom floor has a supervisor?
19 A. Uh-huh.
20 Q. Okay. And then up above the supervisor
21 there's a what?
22 A. Up above the first-line supervisor there
23 may be an area supervisor, general supervisor.
24 Q. By area, you mean area within the plant?
25 A. Yes.

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1 Q. And then above the plant -- above the area
2 supervisor, what would be next?
3 A. It depends on the size of the plant.
4 Q. Let's take a large plant.
5 A. In a large plant there would, probably, be
6 a superintendent or an assistant plant
7 manager, and then a plant manager.
8 Q. And then from the plant level one would go

9 to the divisional level?

10 A. That's true.

11 Q. And what would be the hierarchal

12 arrangement at the division level?

13 A. There would be a divisional director of

14 manufacturing that the collection of plant

15 managers would report to. And that divisional

16 director of manufacturing would report to a

17 divisional president.

18 Q. And the divisional president would then,

19 in turn, report to whom?

20 A. The chief operating officer.

21 Q. Did you participate in the management

22 decision to file the section 1113 motion?

23 A. I did.

24 Q. Who made the decision to file the motion?

25 A. I believe the board of directors.

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1 Q. And did you recommend the filing of the

2 motion?

3 A. I did.

4 Q. Who decided which UAW labor agreements and

5 which parts of UAW labor agreements you would

6 seek authority to reject?

7 A. That was, basically, within my preview and

8 with my staff, recommended to the senior

9 management of the company and the board.

10 Q. And would you describe the process that
11 you and your staff went through to determine
12 which UAW agreements, both at the national and
13 local level, and which parts of those
14 agreements to seek authority to reject?

15 A. Essentially, we did a review and analysis
16 of those agreements, both local and national,
17 that we viewed as an impediment to our
18 competitiveness and our ability to transform
19 the company. And those that were,
20 essentially, out of line with competitive
21 practice within our industry, such that it
22 would represent an impediment to
23 transformation. We indicated those -- or
24 those agreements that should be -- we decided
25 those agreements should be terminated if we

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1 could not consensually revise them.

2 Q. So the criteria was whether or not the
3 agreement would be an impediment to --

4 A. First, whether they were competitive or
5 not within the industry.

6 Q. Uh-huh.

7 A. And whether that represented an impediment
8 to our ability to transform.

9 Q. And how did you conduct the inquiry as to

10 whether or not the various agreements would be
11 competitive?

12 A. We evaluated various aspects of the
13 agreements in terms of wage and benefits, in
14 terms of work practices and in terms of our
15 ability to respond to customers and the
16 market, or flexibility provisions if you will.

17 Q. And did you, as a criteria, use whether or
18 not the modifications you had identified as
19 impediments, as you have described it, were
20 necessary to the reorganization of the
21 company?

22 A. I think that's a fair comment. We looked
23 at them as if they were not competitive and
24 would prohibit us from transformation, then it
25 was necessary to change them.

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1 Q. And you did that on an agreement by
2 agreement basis.

3 A. We reviewed all the agreements, that's
4 true, all the agreements.

5 Q. Do you have before you your March 26th
6 letter and offer -- what exhibit number is
7 that? March 24th of '06, the offer that's now
8 on the table? Exhibit 89.

9 A. I do have this before me.

10 Q. Turning to the proposed modification

11 chart, which is three pages in. And if you
12 turn to page 2 of that document. And if you
13 zip down to the bottom line, carrying over to
14 page 3, you'll see that Delphi is seeking to
15 reject, presumably in addition to everything
16 else that came before it in the two pages, any
17 and all other agreements, supplements,
18 appendices, documents, memoranda, letters,
19 minutes and understandings published and
20 unpublished between Delphi Corporation and the
21 international union UAW, with an exception
22 that I think is not relevant to my question.
23 Can you identify for us what other agreements,
24 supplements, etcetera, you're talking about?
25 A. Through the course of local bargaining, in

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1 particular, there are many local settlements,
2 understandings, memoranda, that may be in
3 place that are not compliant with competitive
4 practice. So we sought to cancel those as
5 well.
6 Q. And did you examine those local union
7 agreements that you've just described?
8 A. We did not examine all of those at the
9 corporate level.
10 Q. Were they examined at either the district

11 or the plant level?

12 A. I think they were generally known as
13 matter of local management, but as part of
14 this process we did not do an absolute
15 detailed examination.

16 Q. As we stand here and sit here now, can you
17 identify for us any such agreements, etcetera,
18 supplements, appendices, etcetera?

19 A. As I sit here, I cannot bring for the UAW
20 a specific instance to mind, but I know they
21 exist.

22 Q. All right. If you turn to page 4 of that
23 attachment, and that comes after the list of
24 UAW local agreements, specifically enumerated
25 that you seek to reject, there is also, on the

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1 bottom of the page, a comparable catch-all, so
2 that you seek to reject any and all other
3 agreements, supplements, appendices,
4 documents, memoranda, letters, minutes and
5 understandings published and unpublished
6 between Delphi and the UAW local unions.
7 Again, can you identify for us what that
8 phrase refers to?

9 A. It refers, as I mentioned previously, to
10 basically local understandings, or commitments
11 made or grievance settlements that may

12 represent non-competitive practices.

13 Q. And can you tell us how the UAW was

14 supposed to understand when receiving and

15 reading this document, to what such

16 agreements, supplements, etcetera, you were

17 referring that you were seeking to reject?

18 A. I think through the course of bargaining

19 and throughout our history, the local

20 agreements, and the local parties know, with

21 great understanding and great detail their

22 local commitments, their local understandings.

23 Q. But you did not, at the headquarters

24 level, maintain any log or list or copies of

25 any such agreements?

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1 A. Certainly not of grievance settlements or

2 local memoranda, we do not keep that at the

3 corporate level. I can cite one example as I

4 think about it now, that I am aware of, at the

5 Flynt East site, a local understanding where,

6 based on seniority, the local -- the hourly

7 employee would be allowed to select their

8 preferred job within a department, which

9 limits the flexibility of the operation, that

10 kind of thing.

11 Q. Can you tell us whether, on the bottom of

12 page 2 and on the bottom of page 4, whether
13 the agreements referred to in each instance
14 include only written documents and agreements
15 or does it include within it as the language
16 would suggest, all agreements and
17 understandings as well.

18 A. It was intended to be broad for any
19 understandings that would inhibit
20 competitiveness.

21 Q. And your understanding, again, is that the
22 UAW should be able to divine from these
23 references the agreements, oral and written,
24 published and unpublished, of the character
25 described that you seek authority to reject?

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1 A. My experience has been, when we -- when we
2 run or follow any of these understandings,
3 written or unwritten, we are called into
4 account by the local parties. They tend to
5 know them well.

6 Q. Doesn't respond to my question, if the
7 reporter would please read the question.

8 THE REPORTER: And your
9 understanding, again, is that the UAW should
10 be able to divine from these references the
11 agreements, oral and written, published and
12 unpublished, of the character described that

13 you seek authority to reject?

14 THE WITNESS: It is my belief that
15 the UAW would be knowledgeable of those or be
16 able to be knowledgeable of those.

17 BY MR. SIMON:

18 Q. If you would turn to pages C1 to C5 at the
19 back of that document you will see Appendix C
20 non-exclusive list of agreements that will be
21 eliminated. Are you familiar with this list?

22 A. I am.

23 Q. And this list was both prepared under your
24 supervision, reviewed by you and determined by
25 you to include only those agreements that

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1 would be impediments, as you've described it,
2 and necessary to the corporation's
3 reorganization?

4 A. I think this represents those that we had
5 identified in our review and the term non-
6 exclusive coincides with any others beyond
7 this.

8 Q. So that, in effect, this is a partial list
9 of what was described earlier on page 4?

10 A. The non-exclusive list.

11 Q. And again, it was determined by you or by
12 your staff, subject to your authority and

13 approval, that this list consists of
14 agreements determined by Delphi to be
15 impediments, as you've described it, and
16 therefore necessary to the reorganization of
17 Delphi, correct?

18 A. Non-competitive practices or
19 understandings that would impede our ability
20 to transform competitively.

21 Q. On page C3 you have listed the following,
22 the unpublished memorandum of understanding
23 regarding paid lunches on Christmas and
24 Thanksgiving Day, and any similar
25 understanding from 1999 local negotiations at

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1 the Delphi in the Kokomo plant. Do you know
2 what that unpublished memorandum of
3 understanding is?

4 MR. BUTLER: Objection. Your
5 Honor, I tried to be quiet here, but Mr. Simon
6 and I both know that you can only reject a
7 contract in whole or in part. I'd like him to
8 explain to the Court what this line of
9 questioning is about. I don't mean trying to
10 seek legal conclusions, but these contracts,
11 you can't reject partial contracts. I don't
12 know what -- I have a tough time understanding
13 what --

14 MR. SIMON: We're just trying to
15 understand what the company is trying to
16 reject. It listed some things, it said
17 anything else anyone can think of.

18 THE COURT: Well, is it

19 MR. SIMON: -- and it says that
20 they're impediment and we're going to try and
21 examine and see, (a) when the witness knows
22 what this agreement he seeks to reject
23 actually is. If he doesn't, I'll help him
24 understand it. And then we'll try and
25 determine how they determined that this was an

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1 impediment, because the witness has said they
2 picked and chose between those they thought
3 were impediments and those they weren't. A
4 perfectly appropriate line of questioning.

5 THE COURT: Well, let me ask you,
6 because your answer suggested that the reason
7 you picked these agreements is because they
8 were anti-competitive or that they -- is that
9 the only reason you picked these agreements?

10 THE WITNESS: What I was trying to
11 get to Your Honor, is we do have some sites
12 that are under agreements that have very
13 competitive terms and they were excluded from

14 the 11/13 -- 11/14 motion.

15 THE COURT: All right.

16 THE WITNESS: They were not an
17 impediment.

18 THE COURT: But so Mr. Butler, I
19 don't understand your objection, because it
20 suggests that the company would have to reject
21 those too?

22 MR. BUTLER: No, Your Honor. The
23 contracts -- there are separate contracts that
24 the UAW has with us at separate locations.
25 But what Mr. Simon's line of questioning seems

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1 to be headed towards is trying to explore and
2 trying to get the witness, you know, on a
3 legal issue, to try to deal with the issue of,
4 okay, at a contract or at a specific site did
5 you include or not include certain provisions
6 of that contract when, in fact, the catch-all
7 provisions were designed to catch everything.

8 THE COURT: Well, I don't know.
9 Based on his answers, it doesn't seem to be
10 that it was the reason for it being on the
11 list.

12 MR. SIMON: Thank you, Your Honor.

13 THE COURT: So I -- you could deal
14 with that in rebuttal, unless the witness has

15 different testimony.

16 MR. SIMON: This won't go on
17 painfully much longer, except for the witness.

18 BY MR. SIMON:

19 Q. Do you know what the unpublished
20 memorandum of understanding regarding paid
21 lunches on Christmas and Thanksgiving day is?

22 A. I'm sorry counselor, could you repeat the
23 question?

24 Q. Do you know what the agreement is?

25 A. I do not know the specifics of the

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1 agreement, but I think I understand the
2 general gist of it from this.

3 Q. Well, what do you understand the gist to
4 be?

5 A. It is an unpublished memorandum that
6 allows for paid lunch during holidays.

7 Q. Well, suppose I read to you what the
8 agreement actually is and see whether you're
9 going to stick with your answer.

10 "Arrangements for paid lunch on Christmas day
11 and Thanksgiving day for skilled trade
12 employees, not assigned to support production
13 on those days, will be handled, as discussed
14 by union and management during the 1999 local

15 negotiations." Do you know how they would

16 discuss and how they're to be handled?

17 A. I do not know. I know that, generally

18 speaking, paid lunch is not broadly a

19 competitive practice.

20 Q. What is the impact upon Delphi of what you

21 believe the paid lunch for Christmas day and

22 Thanksgiving day for skills, trades, employees

23 not assigned to support production on those

24 days would be?

25 A. I imagine the impact of that would be

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1 rather small at one site, but as a general

2 practice is not competitive.

3 Q. But you only seeking to reject it at this

4 one site. Can you tell us at this one site --

5 you listed this agreement, I didn't. You seek

6 to reject this agreement, I didn't. At this

7 one site, what does this agreement produce by

8 way of a competitive impact on Delphi

9 Corporation?

10 A. This one agreement being this specific?

11 Q. The unpublished memorandum of

12 understanding regarding paid lunches on

13 Christmas and Thanksgiving day and any similar

14 understanding from 1999 local negotiations at

15 the Delphi ENS Kokomo plant?

16 A. I cannot speak to the specific impact of
17 that one particular point, only that Kokomo is
18 losing money.

19 Q. Okay. If we were to go through this list,
20 and I don't propose to unless you give me a
21 ridiculous answer, would your response be,
22 essentially, the same with regard to the
23 couple of pages of listing of non-exclusive
24 agreements at local unions?

25 A. I think our -- yes. I think our intent

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1 was to reject the contracts in whole as they,
2 in whole, represent non-competitive
3 arrangements.

4 Q. And that includes, as you've listed here,
5 a whole variety of settlements of grievances
6 and other cases between local management and
7 the local union?

8 A. I believe those settlements that
9 represented then ongoing understandings that
10 affected operations.

11 Q. And do you know, as we sit here, which of
12 these rejected settlements fit within that
13 category? Can you tell us what the settlement
14 of management initiative M-11, dated October
15 12, 1999, at the Delphi ENC Milwaukee plant,

16 that's about the sixth or seventh bold line on
17 page C-3, what that -- what that is?

18 A. I cannot.

19 Q. Do -- isn't it conceivable that it
20 represents no impact whatsoever on Delphi's
21 competitive position?

22 A. This list was prepared and reviewed by
23 staff against whether these were impeding our
24 competitiveness at the -- at the operation.
25 So I feel they had a fair review.

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1 Q. And that's basically the same staff that
2 dealt with the Kokomo Thanksgiving and
3 Christmas lunch, special memo?

4 A. It was the staff of the divisional labor
5 team working with the corporate labor team.

6 Q. And this is not exclusive?

7 A. That's correct.

8 Q. But you seek to reject everything else
9 that fits within the category, in addition to
10 these, what -- three, four, five pages of
11 settlements and side agreements that you can't
12 even describe for us. So, you want to reject
13 the national contracts, the local contracts,
14 anything else you can think of, including the
15 items on page -- pages C1 through C5. That's
16 what this company seeks to reject?

17 A. That's correct.

18 Q. On page 6 of your proposed modifications

19 --

20 A. Pardon me counselor, what exhibit number
21 was that again?

22 Q. It's the one you've just been looking at,
23 89.

24 A. Thank you.

25 Q. And the last bullet point at the top box,

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1 paragraph 90 of the UAW Delphi national
2 agreement will be deleted. And all other
3 references to payment plans in other national
4 and/or local agreement provisions, and/or
5 associated documents or associated
6 supplemental agreements and any related
7 understandings, practices or settlements
8 written or unwritten, will be eliminated. Can
9 you tell us what that refers to?

10 A. As I sit here, no I can't.

11 Q. And in the last box on that page, the same
12 catch-all with regard to the COLA provision.

13 Can you tell us what those relate to?

14 A. This effectively is eliminating the cost
15 of living allowance.

16 Q. Yes, but it's also eliminating all other

17 references to COLA and other provisions and/or
18 associated documents, all associated
19 supplemental agreements and any related
20 understandings, practices or settlements
21 written or unwritten. Can you tell us whether
22 there are any such and if so, what they are.
23 A. There are a number of various impacts on
24 COLA that may be how grievances are settled.
25 It may be how other provisions of the

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1 agreements are calculated for the impact of
2 COLA. So --
3 Q. But you can't -- I'm sorry.
4 A. So, we were effectively saying, by
5 eliminating COLA, we were pulling it through
6 to all impact.
7 Q. But you can't tell us, specifically,
8 whether there are any such documents,
9 understandings, practices, settlements written
10 or unwritten, specifically, that you seek to
11 eliminate?
12 A. Well again, as I mentioned, there are any
13 number of settlements and grievance
14 settlements included, that would specifically
15 call out for a COLA payment to be made. And
16 we were seeking to broadly eliminate COLA and
17 its impact.

18 MR. SIMON: If I may just have a
19 quick moment.
20 BY MR. SIMON:
21 Q. On page 7, relating to overtime, you also
22 have a reference in the middle box to all
23 other associated documents, etcetera. Can you
24 identify those for us?
25 A. Can you --

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1 Q. Sure.
2 A. -- you say middle box --
3 Q. Okay. It's the paragraph that begins
4 paragraphs 81, 82, 84A, 84B and then there's a
5 laundry list, and then any, all and all other
6 references to computing overtime premium pay
7 in other provisions and/or associated
8 documents, all associated supplemental
9 agreements and any related understandings,
10 practices or settlements written or unwritten,
11 will be eliminated. Can you identify those
12 for us?
13 A. That was effectively, again, aimed at
14 bringing overtime understandings or practices
15 in alignment with the bullet above.
16 Q. My question to you sir, is whether you can
17 identify it?

18 A. In alignment with the bullet above.

19 Q. My question to you is whether you can
20 identify any such for us?

21 A. Specifically, no.

22 Q. And on page 8 relating to shift premiums.
23 Middle of the page, paragraph 89 of the
24 national agreement and all other references,
25 etcetera, etcetera, etcetera. Can you

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1 identify any such for us?

2 A. I believe at certain locals we do have
3 variant shift practices, particularly on
4 continuous operations shift premium and this
5 was intended to bring those in conformance
6 with the five percent.

7 Q. Can you identify any four so that the
8 folks in those local unions that you have
9 targeted will know what it is that you're
10 talking about?

11 A. As I sit here, I cannot specifically
12 identify.

13 MR. SIMON: Your Honor, this is
14 painful but that phrase runs through a dozen,
15 or perhaps more, of the provisions. And my
16 questions will be the same. I suspect the
17 answers will be the same. I don't want it to
18 get tedious but I do want to make the point

19 with regard to each such area where catch-all
20 provisions of that sort have been identified
21 and sought to be eliminated. And I can do it
22 page by page, or we can somehow have --

23 THE COURT: Well, let me ask you,
24 you've seen these provisions, we've been
25 through them already. Is there any instance,

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1 that you're aware of in this document, where
2 you have a provision like that, that is
3 serving any purpose other than to impose a
4 specific provision?

5 THE WITNESS: I don't --

6 THE COURT: Or to insure that some
7 agreement you're not aware of undoes a
8 specific provision that you're seeking to
9 impose?

10 THE WITNESS: That, again, Your
11 Honor, our intent was, as we called out these
12 competitive changes we wanted to make, it was
13 to insure that there were no other
14 contravening provisions.

15 THE COURT: Well, how would -- how
16 did you contemplate the catch-all actually
17 being implemented?

18 THE WITNESS: What we were moving to

19 reject were both the national and the local
20 agreements and then, effectively saying these
21 national changes would prevail.

22 THE COURT: So there wouldn't --
23 effectively, with regard to these national
24 changes, there would be no local agreements on
25 those provisions?

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1 THE WITNESS: It would only be those
2 that through the process would be bargained
3 locally. And a consensual arrangement and
4 then approved by the national parties.

5 THE COURT: And there was no -- but
6 there was no separate analysis as to whether
7 those local provisions were better for the
8 company than the national agreements or worse?

9 THE WITNESS: The -- there was not a
10 separate analysis Your Honor, to say that --
11 our experience has been, as it relates to
12 these arrangements, we're virtually always
13 expansionary at the local level, as it relates
14 to the UAW.

15 THE COURT: Does that mean -- when
16 you say expansionary, does that mean --

17 THE WITNESS: Less favorable to the
18 company.

19 THE COURT: Less favorable to the

20 company.

21 THE WITNESS: That's right.

22 THE COURT: But there's nothing
23 specific in this agreement that reflects that.

24 THE WITNESS: We were -- we were
25 wanting to insure because of the broad nature,

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1 sometimes, of local understandings in local
2 bargaining and grievance settlements that
3 become, as I said, expansionary. That we were
4 covering all of that as we were trying to
5 bring it to competitive levels.

6 THE COURT: Does that help?

7 MR. SIMON: Your Honor, if we can
8 assume that that form of answer and its
9 implications, I believe, from a legal point of
10 view would apply to all of the instances in
11 which that catch-all phrase is set forth,
12 fine. If we can't I'll just go page by page.

13 THE COURT: Well --

14 MR. SIMON: I have no problem doing
15 it, I just -- I didn't want the Court --

16 THE COURT: I would assume that
17 based --

18 MR. SIMON: -- to look at me cross-
19 eyed.

20 THE COURT: I would assume that,
21 based on the witness answer. And I see
22 counsel nodding to your right so --
23 MR. SIMON: Thank you.
24 THE COURT: Okay.
25 BY MR. SIMON:

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1 Q. I do have a number of other questions that
2 aren't comprehended by what we've just
3 discussed. If you would turn to page 5 of
4 your March 6th proposed -- same exhibit
5 number. The bottom of the top box. In the
6 event that GM does not agree to provide
7 financial support the non-contingent terms set
8 forth in or appended to this term sheet shall
9 govern. In the event that GM agrees to
10 provide financial support, but that support is
11 insufficient to fund all of the contingent
12 proposals set forth herein, or if GM is unable
13 to meet the commitments, Delphi and the UAW
14 agree to discuss which contingent proposals
15 will be implemented and/or maintained. So
16 this is a proposal to meet and discuss what
17 happens if the GM commitment in whole or in
18 part is not fulfilled, correct?
19 A. That's correct.
20 Q. And what happens if after the meet and

21 confer agreement is not reached between the
22 UAW and Delphi on the -- on which contingent
23 proposals will be implemented or maintained?
24 A. The -- this was intended and remains
25 intended to allow for dialogue and negotiation

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1 between the parties to hammer that out. The
2 failure mode would be the November 15th
3 underlying proposal.

4 Q. So then there would be no discussions in
5 that regard?

6 A. No, I don't believe that's correct. It
7 was our intent to indicate, through this
8 language, that we have the November 15th
9 proposal. And to the extent that General
10 Motors can provide additional subsidy and
11 support, clearly at these levels, this would
12 be the proposal. If it's short of that, then
13 we would discuss it and try to --

14 Q. And if you -- I'm sorry.

15 A. And try to come to some sort of consensus
16 or --

17 Q. And my question to you is, what happens or
18 what would happen if after the discussions you
19 did not come to a consensus?

20 A. Is this in a consensual discussion basis,

21 or in an imposition basis?

22 Q. I'm just taking your question to the next

23 step. The proposal provides for discussions.

24 I'm looking at this proposal, okay.

25 Q. All of this happens. GM provides support

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1 that Delphi deems insufficient to fund the

2 contingent proposals. Or, I suppose what,

3 General Motors files its Chapter 11. And it's

4 unable to meet its commitments, Delphi and the

5 union agree to discuss with contingent

6 proposals will be implement and/or maintained.

7 I'm asking you to fill in the following blank

8 in the sentence. "If such discussions do not

9 result in an agreement, then --

10 A. We would continue discussing within the

11 available subsidy to try to achieve an

12 acceptable solution, as long as the agreement

13 is otherwise in force, the National Agreement.

14 Q. Would failure to agree be subject to the

15 dispute resolution provisions of the

16 agreement?

17 A. I don't believe so, but I haven't thought

18 about that. I don't know.

19 Q. Why don't you believe so?

20 A. I -- I don't believe -- I'm just not --

21 off the top of my head, I have not thought

22 about that as whether it applies.

23 Q. Okay. You might have a chance to think
24 about it overnight and can come back and tell
25 us whether your additional thoughts produce

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1 anything. On page 12 of your proposal,
2 Exhibit 89 -- we'll credit where credit is
3 due. In the top box dealing with health care,
4 you provide other miscellaneous documents; an
5 unpublished letter shall be reviewed to
6 determine if they are essential to providing
7 the health care plan and shall be modified or
8 eliminated as appropriate. Who conducts that
9 review?

10 A. That would be handled by the benefit
11 staff of both the UAW and the -- and the
12 company.

13 Q. And, if they were unable to agree either
14 as to essentiality or to whether something
15 needed modification or elimination as
16 appropriate, what would happen? And my next
17 question, so you can think about it for a
18 couple of minutes, is whether --

19 MR. BUTLER: Objection. One
20 question at a time.

21 MR. SIMON: I'm trying to be a nice

22 guy. That's what happens. No good deed -- no
23 good deed goes unpunished. I was going to
24 give you a preview of the next question, but I
25 won't.

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1 THE COURT: Why don't you just
2 rephrase the first question? Or do you
3 remember the first question.

4 BY MR. SIMONS:

5 Q. What happens if you don't agree, or the
6 benefit staff of UAW and Delphi do not agree
7 on either essentiality or on such
8 modifications or eliminations as may be
9 appropriate?

10 A. I would have to review that. I don't
11 believe we have a dispute resolution within
12 the healthcare agreement.

13 Q. There is a dispute resolution mechanism
14 under both the national and local agreements,
15 is there not?

16 A. I believe there is.

17 Q. But you do not believe either of them
18 would apply to the questions we just
19 discussed, but you haven't thought about it
20 like you're making it sound like --

21 A. I need to review.

22 Q. Got it. On page 14, under relocation

23 allowance. You provided that on a case by
24 case basis, Delphi employees relocating to a
25 GM plant outside of the area hire or

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1 transpiring from the Delphi plant to a Delphi
2 plant may be eligible for a relocation
3 allowance based on actual expenses incurred,
4 up to a maximum of 10,000 dollars. Who would
5 conduct that case by case analysis?

6 A. That was intended to be a foundation for
7 negotiation and discussion between the company
8 and union.

9 Q. And what criteria -- sorry.

10 A. Yes. I'm sorry. That was intended to be
11 a process of -- or a foundation for
12 negotiation and discussion with the union.

13 Q. And in the event, those discussions did
14 not produce an agreement, what would happen?

15 A. In that case, where there was no
16 resolution, again, I would have to review the
17 dispute resolution, but it would be our
18 position that we would determine in what cases
19 that applied.

20 Q. And what criteria would you use?

21 A. We would take a look at the distance or
22 area, how far, if you were the relocation --

23 out of very hire generally means outside of 50
24 miles.

25 Q. And who would make that review?

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1 A. We would have -- we have a staff that
2 deal with relocation and transfer.

3 Q. At the local district or headquarters
4 office?

5 A. At the headquarters level.

6 Q. And, again, you're not sure whether there
7 would be any recourse to dispute resolution
8 mechanism; it's something you want to think
9 about?

10 A. It would be, generally speaking, we
11 resolve these issues by operation of the
12 agreement now --

13 Q. Generally speaking, you don't move to
14 reject contracts?

15 A. True.

16 Q. Page 15; buy out payments, middle of the
17 box. "The application period, timing of buy
18 outs, release dates and number of sign-up
19 dates will be jointly determined by Delphi and
20 the UAW. These dates may vary by location."
21 Again, failure to agree?

22 A. Basis for negotiation and I would -- and
23 a failure to agree, have to review.

24 Q. Failure to agree?

25 A. I would have to review the process.

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1 Q. Page 23 -- I have the wrong page
2 reference. Page 22, personal savings plan,
3 the top box, Exhibit 89. "Provision of these
4 defined contribution benefits is contingent
5 upon financial support from GM. In the
6 absence of such support, the corporation will
7 implement a defined contribution benefit for a
8 future benefit accruals where appropriate."
9 What does the phrase "where appropriate" mean?

10 A. In the instance where a personal savings
11 plan would be an essential ingredient of a
12 defined contribution plan and a replacement of
13 a frozen pension plan, that's what we were
14 alluding to.

15 Q. So, when would that be?

16 A. Our proposal sought to freeze the pension
17 plan. And many of the membership is covered
18 under the GM Benefit Guarantee and certain
19 portion of population of population is not.
20 So a personal savings plan would be used to
21 handle those folks not covered under the GM
22 Benefit Guarantee.

23 Q. I see. So that's only for those not

24 covered by whatever GM is committed and
25 obligated and, in fact, does because you've

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1 recognized earlier, GM may or may not fulfill
2 their commitment. So this would be a proposal
3 for those for who, for one reason or another,
4 do not receive the GM benefit. The company
5 would establish for them a defined
6 contribution plan?

7 A. This was intended for those not covered
8 under the GM Benefit Guarantee.

9 Q. And what defined contribution benefit
10 would Delphi implement?

11 A. It would be a subject of negotiation.

12 Q. And failure to agree?

13 A. Same as before.

14 Q. Page 23, middle box. "Delphi reserves
15 the right, while in Chapter 11 to seek a
16 distress termination of the HRP," which is the
17 defined benefit plan, right?

18 A. Yes.

19 Q. In the event it determines that it cannot
20 maintain the HRP under the applicable legal
21 standards for such a termination, does Delphi
22 management have an understanding now whether
23 it would be able to maintain a defined benefit
24 plan?

25 A. It is our desire to do so.

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1 Q. Does it have an understanding as to

2 whether or not it will be able to do so?

3 A. It is dependent upon both the changes

4 that we seek to make in our collective

5 bargaining agreements as well as getting a

6 suitable arrangement for funding with the PBGC

7 and, potentially, the IRS.

8 Q. Based upon Delphi's existing financial

9 forecasts and current law, does management

10 have a position as to whether or not it will

11 have the ability to fund the defined benefit

12 plan?

13 A. I believe if we remain as we are and do

14 nothing we place our business and our benefit

15 plans in jeopardy.

16 Q. You're aware of Mr. Sheehan's declaration

17 regarding pension obligation -- pension

18 funding obligations and the corporation's

19 ability to meet them?

20 A. I am.

21 Q. You're aware that in his declaration at

22 paragraph 54, he asserts that the pension

23 funding obligations exceed all of the cash and

24 available credit that Delphi anticipates

25 having?

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1 A. I believe that to be a true statement.

2 Q. Has Delphi or its consultants studied
3 what the impact would be on UAW represented
4 employees in the event of a defined benefit
5 plan termination?

6 A. We have -- we have reviewed that
7 possibility.

8 Q. And what did your review produce by way
9 of information and conclusions?

10 A. That in the event of a pension plan
11 termination significant, if not majority of
12 employees, would be covered under the GM
13 Benefit Guarantee and the others would have an
14 impact to their pension plan if picked up by
15 the PBGC.

16 Q. Have a significant impact?

17 A. It would.

18 Q. And, have you made a determination as to
19 General Motor's ability to fulfill the
20 obligations you've described in the event you
21 just described?

22 A. Not that I'm aware of.

23 Q. So that, as you noted in one of your
24 earlier proposals, it's really subject to GM's
25 ability to meet its obligations, is it not?

1 A. I'm sorry, could you define it? It's --

2 Q. The ability of your proposal to cover
3 employees through a General Motors pickup of
4 obligation, would be subject to GM's ability
5 to meet its obligations?

6 A. Could you rephrase the question, please?

7 Q. Do you recall that on page 6 of your
8 proposal -- we went through this question
9 earlier, I think. Sorry, page 5 of your
10 proposal, Exhibit 89, middle of the page. "In
11 the event GM agrees to provide financial
12 support, but that support is insufficient to
13 fund all the contingent provisions herein. Or
14 if GM is unable to meet its commitments,
15 etcetera."

16 A. Yes.

17 Q. So, much of the same way as you are
18 acknowledging the contingencies attendant upon
19 a GM obligation on page 5, I assume you would
20 acknowledge them with regard to any GM
21 obligations relating to the subject we've just
22 been examining.

23 A. You mean --

24 Q. What's good for the goose is good for the
25 gander.

1 A. You mean the Benefit Guarantees?

2 Q. Yes.

3 A. I believe GM's ability to perform under
4 the Benefit Guarantees, is subject to their
5 capability to do that.

6 Q. What would the impact be on Delphi's
7 financial projections if it were to terminate
8 its defined benefit plan? What savings would
9 be produced by a termination?

10 A. There would be a reduction, I believe, in
11 liability. And there would be a reduction in
12 expense and ongoing cash payments in the plan.

13 Q. And can you quantify those for me,
14 please? We talked about three different
15 elements here and we get accounting
16 trickiness. So let's be careful.

17 A. I would have to defer to our financial
18 folks. But the liability would be several
19 billion dollars eliminated and expense and
20 cash contributions would go in the 100's of
21 millions of dollars.

22 Q. So if Delphi would save billions of
23 dollars, and if your judgment is that a
24 significant number of UAW represented
25 employees would not suffer as a consequence,

1 why hasn't Delphi simply pursued that option?

2 A. Our view was, it was responsible and
3 prudent to restructure the company in a
4 fashion that would get us both competitive and
5 the ability to win in bid work, and retain
6 that degree of pension plan -- a frozen plan
7 that we could responsibly fund and carry.

8 Q. Do you know what controlled group
9 liability is?

10 A. Yes.

11 Q. And your decision not to terminate the
12 plan has nothing to do with your desire to
13 protect against controlled group liability
14 being asserted by the PBGC and against your
15 foreign subsidiaries?

16 A. Not that I'm aware of, no.

17 Q. That was not a consideration and not
18 discussed within the corporation?

19 A. That was not a driving factor in our
20 decision.

21 Q. Are you aware of that reality?

22 A. I am aware of that potentiality.

23 Q. And it doesn't occur to Delphi that its
24 foreign subsidiaries were going to be the
25 beneficiary of the lost work opportunities of

1 American workers, might fairly bear some of
2 the burden of that decision?

3 MR. BUTLER: Objection. Move to
4 strike, argumentative.

5 MR. SIMON: Withdrawn.

6 BY MR. SIMON:

7 Q. Page 29 -- sorry, I must have pagination
8 problems or there are two versions of this
9 document. Page 28, a complete agreement and
10 waiver. This is, typically, what's described
11 as a zipper clause?

12 A. Yes.

13 Q. And, among the things it provides is,
14 "that the corporation and UAW agree that for
15 the life of the agreement, each voluntarily
16 and unqualifiedly waives the right" -- I got
17 some ellipses in here -- "to bargain
18 collectively and that this term sheet
19 represents complete and total agreement in, as
20 to all modifications. And each party
21 voluntarily and unqualifiedly waives the right
22 to raise claim to the contrary." Correct?

23 A. That's correct.

24 Q. Now at some page in this document -- page
25 27, no assumption, right to re-file 1113 and

1 1114 motions. "Nothing contained herein, in
2 effect, precludes the company from filing
3 another 1113 or another 1114 in the even that
4 the changes in the corporation's financial
5 condition or other relevant conditions require
6 it." Correct?

7 A. That's correct.

8 Q. Does the zipper clause, on page 28,
9 supercede the provision on page 27, the no
10 assumption provision?

11 A. I don't believe so.

12 Q. So that Delphi has retained the right to
13 a second or third bite at the apple, it's only
14 the UAW that's really bound by the -- that
15 this is an agreement that we mean it clause,
16 correct?

17 A. I would not characterize it that way, no.

18 Q. Well, the UAW would be bound by this
19 agreement until May 1, 2010, correct?

20 A. That's correct.

21 Q. Delphi could come back say, in September
22 for further relief, in the event of changes in
23 Delphi's financial conditions or other
24 relevant conditions, correct?

25 A. In the event that we were not financially

1 able to perform at the expense of Chapter 11,
2 that would be correct.

3 Q. I'm not sure what those words mean, but
4 they mean what they mean. Changes in
5 financial conditions, as you set it forth in
6 your proposal that phrase, from what basis?

7 Which of the various basis and scenarios
8 described earlier in this hearing is the base
9 for the determination as to whether there
10 would be change in financial condition
11 sufficient to move you back into court for a
12 second or third bite at the apple?

13 A. Change sufficient that we would be able
14 to demonstrate that we are unable to perform
15 and changes are necessary.

16 Q. And who would make that determination?

17 A. I believe the company in its judgment
18 would bring that forward.

19 Q. And what other "relevant conditions"
20 might require a revisit to this courtroom
21 under sections 1113 or 1114?

22 A. As I review this now, nothing comes to
23 mind.

24 Q. Who will decide what's relevant?

25 A. Management, in its review.

1 Q. And if the UAW disagreed, would that be
2 subject to the dispute resolution mechanism?

3 A. I don't believe the Chapter 11 is subject
4 to dispute resolution.

5 Q. What does Delphi plan to do if no
6 agreement is reached between Delphi and the
7 UAW, prior to a decision by this Court and the
8 Court grants your motion?

9 A. I'm sorry could you repeat the question
10 again?

11 Q. Sure. What does Delphi plan to do if no
12 agreement is reached between Delphi and the
13 UAW, prior to a decision by this Court, and
14 the Court grants your motion, what are you
15 going to do?

16 A. We will seek first to continue
17 negotiating to achieve a consensual solution.
18 Failing to achieve that, we will impose
19 contractual changes.

20 Q. And what is it that you will impose the
21 March 24th proposal?

22 A. At this point, I would not speculate. We
23 would have to see where we are at that time.
24 We would have to be prepared to impose the
25 November 15th proposal. But I wouldn't

1 speculate where we'd be on that at this point.

2 Q. So that you're not now prepared to tell
3 the Court what conditions you will impose if
4 the Court grants your motion?

5 A. If necessary, we will impose the November
6 15th provisions.

7 Q. What is the word, if necessary, mean?

8 The question to you, sir, is what does Delphi
9 plan to do if the Court grants your motion?

10 A. To continue to bargain in good faith, and
11 achieve some consensual support from General
12 Motors that allows us to fashion the best
13 transformation agreement that we can fashion.

14 Q. And in the absence of such an agreement
15 from General Motors, what will the company do?

16 A. We would be prepared to impose the
17 November 15th --

18 Q. I'm not asking you what you're going to
19 be prepared to do, sir. I am asking you what
20 you're going to do.

21 MR. BUTLER: Objection. It's about
22 the third time it's been asked.

23 MR. SIMON: Right. And it hasn't
24 been answered yet.

25 THE COURT: What's the basis for the

1 objection?

2 MR. BUTLER: It's been asked and
3 answered. He asked the same question in three
4 different ways. It's been answered three
5 times by the witness, Your Honor.

6 THE COURT: Is it?

7 MR. SIMON: It's been asked, and it
8 hasn't been answered. I agree, guilty, I've
9 asked it three times.

10 THE COURT: I think it's because
11 you're asking him to speculate. He thinks
12 he's speculating. I think his answer is
13 clear. You can make of it what you want.
14 It's been asked and answered and I sustain the
15 objection.

16 BY MR. SIMON:

17 Q. Does Delphi's March 6th proposal
18 represent Delphi's last best and final offer
19 as we sit here today?

20 A. It would be our intent to continue to
21 bargain in good faith after this hearing and
22 after a decision from the Judge.

23 Q. How many times do I have to ask this
24 question before I'm told to desist?

25 THE COURT: I think that was the

1 answer.

2 MR. SIMON: It's non-responsive. I

3 know --

4 THE COURT: It was responsive.

5 MR. SIMON: It was responsive?

6 THE COURT: He didn't agree, he said
7 it wasn't.

8 BY MR. SIMON:

9 Q. Does Delphi have a back up set of
10 proposals to propose in the event its March
11 6th proposal does not form the basis for an
12 agreement with the UAW?

13 A. We are hoping and endeavoring to have
14 counterproposals from the unions, including
15 the UAW.

16 Q. Do you have a back up proposal to make to
17 the UAW?

18 A. We do not have a back up at this time,
19 and would invite a counterproposal.

20 Q. If the Court signs the order you
21 submitted in connection with your 1113 motion,
22 which provided for authority to reject upon
23 days notice, how long would you permit
24 negotiations to go forward before you sent
25 your ten day notice?

1 A. I can't speculate, but broadly, I would

2 say as long as we are making constructive
3 progress toward a resolution.

4 Q. So, you don't have a drop dead date by
5 which time you would submit that notice?

6 A. Not that I would speculate on at this
7 point, no.

8 Q. What does the company plan to do in the
9 event the Court rejects the contract and
10 notwithstanding your willingness to continue
11 to bargain the UAW strikes?

12 A. In the even that the UAW strikes, we will
13 continue to try to resolve the issue, bargain
14 the issue while on strike, as long as we're
15 financially able.

16 Q. And how long do you think that would be?

17 A. I cannot guesstimate that. Its impact
18 would be significant.

19 Q. Do you have tucked away in mind that if
20 there has to be a therapeutic strike during
21 the first two weeks of July during the
22 automobile shutdown, you can tolerate that and
23 then you hope for an agreement? Is that
24 tucked away in the back of your mind.

25 A. A strike during the first two weeks of

1 July would have a lower impact on the company
2 but an impact nonetheless.

3 Q. Will you anticipate given our dialogue
4 that if you impose, on the basis we've been
5 discussing that among the agreement you'd be
6 rejecting is the Kokomo Thanksgiving and
7 Christmas day lunch? Is that your current
8 intention, given our discussion?

9 A. Given our discussion that we would change
10 all the provisions that are non-competitive.

11 Q. On December 19, 2005, after General
12 Motors agreed to interim financial pricing
13 support, Delphi conditionally withdrew its
14 November 5th offer, right?

15 A. November 15th offer, true.

16 Q. And, on March 22, of '06, agreement was
17 reached on the attrition program, correct?

18 A. That's correct.

19 Q. And it had been your hope when you
20 withdrew your proposal in November that there
21 would be tripartied negotiations between
22 General Motors, UAW and Delphi, correct?

23 A. That is correct.

24 Q. And there was an agreement, was there
25 not, to approach those negotiations through a

1 three-part framework? The first of which was
2 to be an attrition program, the second of

3 which was to be footprint discussions and
4 agreement, and the third to be changes and
5 conditions of employment.

6 A. We did agree after exploring all the
7 topics related to a full transformation.

8 Which included transformation of the work
9 force through attrition meetings, as well as
10 the alignment of the portfolio and site. So
11 site impact, wages benefits and work rules.
12 We had discussions about all of those.

13 Several aspects which were memorialized in the
14 March 24th proposal. But we also did talk
15 about how to approach the work, the effort, if
16 you will, to get an agreement and that did
17 include, attrition and then resolving the
18 sites, wages benefits and flexibility issues,
19 including document 13 and jobs.

20 Q. And two days after you reached the
21 attrition agreement, you re-proposed your
22 contract proposal. And nine days after you
23 reached attrition agreement, you filed your
24 Section 1113 motion, correct?

25 A. Starting in January in the three-way

1 discussions, the essential elements of the
2 March 24th proposal, the wage step down, the
3 pension freeze, those elements of the March

4 24th proposal were discussed in a three-way
5 discussion with General Motors and the UAW,
6 and that was memorialized on March 23rd.

7 Q. Did it not occur to you that one reason
8 you were able to reach agreement with the UAW
9 and general motors on the attrition program on
10 March 22nd, was precisely because you did not
11 have a proposal on the table you knew to be
12 unacceptable and you had not filed the 1113?
13 Did that ever occur to you?

14 A. It occurred to us that withdrawing the
15 proposal of November 15th, conditionally,
16 based on input from the UAW and other unions
17 could create an environment for progress. And
18 in our hope, would have resulted in
19 comprehensive resolution of the issues in
20 counterproposals. And what we were able to
21 achieve, in the time frame, was an attrition
22 plan that, while an important first step, did
23 not solve the crux and total of the serious
24 issues we needed to deal with.

25 Q. And so, two days later, you laid on the

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1 table the proposal you knew would be
2 unacceptable, and a week after you filed the
3 1113. And you really consider that to be an

4 action consistent with reaching a consensual
5 agreement?

6 A. The timing of the March 24th proposal,
7 was, again, a memorialization of a discussion
8 that took place and that had been offered to
9 be put in writing in advance of that date.
10 But the union -- UAW requested that not
11 happen. And, so our view, and was just
12 advancing the discussions -- memorializing
13 discussions that had occurred.

14 MR. SIMON: Motion to strike, as
15 non-responsive.

16 THE COURT: What was the question,
17 again? What was the question again?

18 MR. SIMON: Did Delphi really expect
19 that two days after reaching agreement on,
20 what they described as being an extraordinary
21 achievement, the attrition agreement, that by
22 putting on the table a proposal they knew to
23 be unacceptable and a week later filing the
24 section 1113 motion, that they were acting in
25 a manner wholly inconsistent with any effort

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1 to reach a consensual agreement?

2 THE WITNESS: I don't believe so. I
3 believe that our November 23rd -- the March
4 24th proposal, memorialized discussions that

5 had took place and did invite, if it was
6 unacceptable, counterproposals which did not
7 materialize.

8 MR. SIMON: No further questions.

9 MR. BUTLER: Your Honor, at this
10 point I note it's pretty close to the time you
11 had indicated you had wanted to wrap up for
12 the day. I certainly have a fair amount of
13 cross-examination of Mr. Butler. What's your
14 preference?

15 THE COURT: You have more than five
16 minutes, right?

17 MR. BUTLER: I certainly do, sir.

18 THE COURT: All right. I always
19 hate to interrupt a witness in mid-stream, but
20 I think we have to do that here. Mr. Butler,
21 you should not go over your testimony with
22 counsel, just come back tomorrow and we'll
23 resume then. So you can step down.

24 MR. BUTLER: And Your Honor, what
25 time are we starting tomorrow?

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1 THE COURT: 9 o'clock. Before
2 everyone leaves, I have to say two things.
3 Because I know you're going to talk about
4 scheduling.

5 MR. SIMON: We have already.

6 THE COURT: All right. You have
7 already?

8 MR. BUTLER: We have a couple of
9 people we didn't talk to. We have with the
10 unions but it's not complete yet, Your Honor.

11 THE COURT: All right. And does
12 that include wrapping this up, not in the next
13 two weeks, but giving some time for further
14 discussion.

15 MR. BUTLER: If the proposal the
16 debtors made is accepted, the next -- we would
17 have to move the omnibus, and the next hearing
18 after Friday would be the 24th.

19 THE COURT: But that's -- the 24th
20 of May, and would that be the last hearing --

21 MR. BUTLER: No.

22 THE COURT: Okay. All right.
23 Well, that's good because, obviously, we're in
24 the middle of a hearing and what I've seen are
25 the declarations, and the briefs and the

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1 statements of the parties. But, I'll
2 reiterate something I said earlier, which is
3 that the hearing, as it plays out, will lead
4 to a determination by me as to the good faith
5 of both parties in trying to reach consensus

6 here. And while it's true that some offers
7 may be so outrageous as not to merit a
8 response, a union really proceeds -- you know
9 its plural if it doesn't respond because what
10 is so outrageous that doesn't merit a response
11 is in the eyes of the beholder and ultimately
12 that beholder is me. And so, I would strongly
13 urge the parties to sit down and ask each
14 other in a non-litigation setting many of the
15 questions that you're asking right now, and
16 see if you can really make progress. And I
17 think that the parties here are experienced
18 and eager enough to do that in a way that does
19 not -- that keeps the litigation up here in a
20 compartment. Without getting rhetorical about
21 it, obviously, these are difficult issues.
22 But the code requires me, and you, to review
23 them, not ignore the difficulty of the issues,
24 but in a business like way. And, that's how I
25 hope you'll do it. You'd have Thursday, which

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1 I would hope would be a day for parties to
2 deal with process issues, if you can.
3 Informational issues, process issues, and the
4 like. And I wouldn't waste that day, and you
5 can move along from there.

6 MR. SIMON: Unfortunately, Your
7 Honor, litigation intercedes, depositions are
8 scheduled.

9 THE COURT: Depositions on Thursday?

10 MR. SIMON: Not by us.

11 MR. BUTLER: Yes, Your Honor.

12 THE COURT: I thought discovery was
13 --

14 MR. BUTLER: Yes, Your Honor, expert
15 witness depositions on Thursday.

16 THE COURT: All right. Well -- then
17 you can't use Thursday --

18 MR. SIMON: Decompartmentalization
19 is a wonderful theory.

20 MR. BUTLER: Your Honor, that's two
21 lawyers going to deposition and it was because
22 an accommodation was made to the UAW by how
23 they --

24 THE COURT: Well, you can work that
25 out as you see fit.

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1 MR. BUTLER: Right.

2 THE COURT: The other point I want
3 to make is as part of that early analysis, and
4 again, I'm saying this with the full
5 understanding that when we're in mid-stream
6 and this should be taken no more than a

7 suggestion. I would like the company to focus
8 on what I'll refer to as -- I think they refer
9 to themselves as this -- some of the out liar
10 unions to see whether, in fact, it makes sense
11 to proceed with them at this time, given the
12 proposal that's on the table and given their
13 willingness as expressed in oral presentation
14 at the beginning, to focus on their particular
15 situation. I expect, given the importance of
16 the UAW contracts and perhaps other contracts,
17 their lawyers would still attend every minute
18 of this hearing. But, I think that's
19 different then potentially putting them to the
20 test about rejection. And so I hope that's
21 something else that you would talk about over
22 the next day or so.

23 MR. BUTLER: We will, Your Honor.

24 THE COURT: Okay. All right. So,
25 I'll see you all at 9 tomorrow morning.

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1 MR. BUTLER: Your Honor, one
2 question for you. Can we get some guidance
3 from the Court about -- we're starting at 9
4 o'clock in the morning, there's a lot of paper
5 in this room, can any of it stay?

6 THE COURT: You can leave it here.

7 MR. BUTLER: Thank you, Your Honor.

8 THE COURT: Judge Peck has been
9 kind enough to switch courtrooms with me for
10 the next few days.

11 (Whereupon the afternoon session of these
12 proceedings were concluded at 7:02 P.M.)

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, hereby certify that the
foregoing is a true and correct transcription,
to the best of my ability, of the sound
recorded proceedings submitted for

8 transcription in the matter of the bankruptcy
9 proceeding of:
10 DELPHI CORPORATION, et al.

11

12 I further certify that I am not employed
13 by nor related to any party to this action.

14

15 In witness whereof, I hereby sign this
16 date:
17 May 11, 2006.

18

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20 _____
Lisa Bar-Leib

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